

after the effective date of this Act, whether the testimony relates to a medical examination occurring before, on, or after the effective date of this Act.

SECTION 3. This Act takes effect September 1, 1991.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on April 15, 1991, by a non-record vote; passed by the Senate on April 25, 1991, by a viva-voce vote.

Approved May 10, 1991.

Effective September 1, 1991.

CHAPTER 76

H.B. No. 902

AN ACT

relating to adoption of a nonsubstantive revision of the statutes relating to mental health and mental retardation, including conforming amendments.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. ADOPTION OF TITLE. Title 7, Health and Safety Code, is adopted to read as follows:

TITLE 7. MENTAL HEALTH AND MENTAL RETARDATION

SUBTITLE A. TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION

CHAPTER 531. PROVISIONS GENERALLY APPLICABLE TO THE TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION

CHAPTER 532. ORGANIZATION OF TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION

CHAPTER 533. POWERS AND DUTIES

CHAPTER 534. COMMUNITY SERVICES

CHAPTER 535. SUPPORT SERVICES

[Chapters 536–550 reserved for expansion]

SUBTITLE B. STATE FACILITIES

CHAPTER 551. GENERAL PROVISIONS

CHAPTER 552. STATE HOSPITALS

CHAPTER 553. STATE SCHOOLS

CHAPTER 554. STATE CENTERS AND HOMES

[Chapters 555–570 reserved for expansion]

SUBTITLE C. TEXAS MENTAL HEALTH CODE

CHAPTER 571. GENERAL PROVISIONS

CHAPTER 572. VOLUNTARY INPATIENT MENTAL HEALTH SERVICES

CHAPTER 573. EMERGENCY DETENTION

CHAPTER 574. COURT-ORDERED MENTAL HEALTH SERVICES

**CHAPTER 575. ADMISSION AND TRANSFER PROCEDURES FOR
INPATIENT SERVICES**

CHAPTER 576. RIGHTS OF PATIENTS

**CHAPTER 577. PRIVATE MENTAL HOSPITALS AND OTHER
MENTAL HEALTH FACILITIES**

[Chapters 578–590 reserved for expansion]

SUBTITLE D. PERSONS WITH MENTAL RETARDATION ACT

CHAPTER 591. GENERAL PROVISIONS

CHAPTER 592. RIGHTS OF PERSONS WITH MENTAL RETARDATION

**CHAPTER 593. ADMISSION AND COMMITMENT TO MENTAL
RETARDATION SERVICES**

CHAPTER 594. TRANSFER AND DISCHARGE

CHAPTER 595. RECORDS

CHAPTER 596. PUBLIC RESPONSIBILITY COMMITTEE

[Chapters 597–610 reserved for expansion]

**SUBTITLE E. SPECIAL PROVISIONS RELATING TO MENTAL ILLNESS
AND MENTAL RETARDATION**

CHAPTER 611. MENTAL HEALTH RECORDS

CHAPTER 612. INTERSTATE COMPACT ON MENTAL HEALTH

CHAPTER 613. KIDNEY DONATION BY WARD WITH MENTAL RETARDATION

**CHAPTER 614. TEXAS COUNCIL ON OFFENDERS WITH
MENTAL IMPAIRMENTS**

CHAPTER 615. MISCELLANEOUS PROVISIONS

TITLE 7. MENTAL HEALTH AND MENTAL RETARDATION

**SUBTITLE A. TEXAS DEPARTMENT OF MENTAL HEALTH AND
MENTAL RETARDATION**

**CHAPTER 531. PROVISIONS GENERALLY APPLICABLE TO THE TEXAS
DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION**

Sec. 531.001. PURPOSE; POLICY

Sec. 531.002. DEFINITIONS

**CHAPTER 531. PROVISIONS GENERALLY APPLICABLE TO THE TEXAS
DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION**

Sec. 531.001. PURPOSE; POLICY. (a) It is the purpose of this subtitle to provide for the effective administration and coordination of mental health services at the state and local levels.

(b) Recognizing that a variety of alternatives for serving the mentally disabled exists, it is the purpose of this subtitle to provide for a continuum of services. The continuum of

services includes facilities operated by the Texas Department of Mental Health and Mental Retardation and community services provided by the department and other entities through contracts with the department.

(c) It is the goal of this state to provide a comprehensive range of services for persons with mental illness or mental retardation who need publicly supported care, treatment, or habilitation. In providing those services, efforts will be made to coordinate services and programs with services and programs provided by other governmental entities to minimize duplication and to share with other governmental entities in financing those services and programs.

(d) It is the policy of this state that, when appropriate and feasible, persons with mental illness or mental retardation shall be afforded treatment in their own communities.

(e) It is the public policy of this state that mental health and mental retardation services be the responsibility of local agencies and organizations to the greatest extent possible. The department shall assist the local agencies and organizations by coordinating the implementation of a statewide system of services. The department shall provide state-administered mental health and mental retardation services and provide technical assistance for and regulation of the programs that receive funding through contracts with the department.

(f) It is the public policy of this state to offer services first to those persons who are most in need. Therefore, funds appropriated by the legislature for mental health and mental retardation services may be spent only to provide services to the priority populations identified in the department's long-range plan.

Sec. 531.002. DEFINITIONS. In this subtitle:

(1) "Board" means the Texas Board of Mental Health and Mental Retardation.

(2) "Commissioner" means the commissioner of mental health and mental retardation.

(3) "Community center" means a center established under Subchapter A, Chapter 534.

(4) "Department" means the Texas Department of Mental Health and Mental Retardation.

(5) "Effective administration" includes continuous planning and evaluation within the system that result in more efficient fulfillment of the purposes and policies of this subtitle.

(6) "ICF-MR" means the medical assistance program serving persons with mental retardation who receive care in intermediate care facilities.

(7) "Local agency" means:

(A) a municipality, county, hospital district, rehabilitation district, school district, state-supported institution of higher education, or state-supported medical school; or

(B) any organizational combination of two or more of the following entities:

(i) a municipality;

(ii) a county;

(iii) a hospital district; or

(iv) a school district.

(8) "Local mental health authority" means a local service provider selected by the department to plan, facilitate, coordinate, or provide services to persons with mental illness in a local service area.

(9) "Local mental retardation authority" means a local service provider selected by the department to plan, facilitate, coordinate, or provide services to persons with mental retardation in a local service area.

(10) "Mental health services" includes all services concerned with research, prevention, and detection of mental disorders and disabilities, and all services necessary to treat, care for, control, supervise, and rehabilitate persons who have a mental disorder

or disability, including persons whose mental disorders or disabilities result from alcoholism or drug addiction.

(11) "Mental retardation services" includes all services concerned with research, prevention, and detection of mental retardation, and all services related to the education, training, habilitation, care, treatment, supervision, and control of persons with mental retardation, but does not include the education of school-age persons that the public educational system is authorized to provide.

(12) "Person with mental retardation" means a person, other than a person with a mental disorder, whose mental deficit requires the person to have special training, education, supervision, treatment, care, or control in the person's home or community or in a state school.

(13) "Priority population" means those groups of persons with mental illness or mental retardation identified by the department as being most in need of mental health or mental retardation services.

(14) "Region" means the area within the boundaries of the local agencies participating in the operation of community centers established under Subchapter A, Chapter 534.

(15) "State school" means a state-supported and structured residential facility operated by the department to provide to clients with mental retardation a variety of services, including medical treatment, specialized therapy, and training in the acquisition of personal, social, and vocational skills.

CHAPTER 532. ORGANIZATION OF TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION

Sec. 532.001. COMPOSITION OF DEPARTMENT

Sec. 532.002. APPLICATION OF SUNSET ACT

Sec. 532.003. COMPOSITION OF BOARD

Sec. 532.004. RESTRICTIONS ON BOARD APPOINTMENT AND MEMBERSHIP AND
ON DEPARTMENT EMPLOYMENT

Sec. 532.005. TERMS

Sec. 532.006. CHAIRMAN

Sec. 532.007. REMOVAL OF BOARD MEMBERS

Sec. 532.008. PROHIBITED ACTIVITIES BY FORMER OFFICERS OR EMPLOYEES

Sec. 532.009. REIMBURSEMENT FOR EXPENSES; PER DIEM

Sec. 532.010. BOARD MEETINGS

Sec. 532.011. COMMISSIONER

Sec. 532.012. MEDICAL DIRECTOR

Sec. 532.013. DEPUTY COMMISSIONERS

Sec. 532.014. HEADS OF DEPARTMENTAL FACILITIES

Sec. 532.015. RULES AND POLICIES

Sec. 532.016. PERSONNEL

Sec. 532.017. ANNUAL REPORTS

Sec. 532.018. AUDITS

Sec. 532.019. PUBLIC INTEREST INFORMATION AND COMPLAINTS

Sec. 532.020. ADVISORY COMMITTEES

Sec. 532.021. CITIZENS' PLANNING ADVISORY COMMITTEE

CHAPTER 532. ORGANIZATION OF TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION

Sec. 532.001. COMPOSITION OF DEPARTMENT. (a) The Texas Department of Mental Health and Mental Retardation is composed of:

- (1) the Texas Board of Mental Health and Mental Retardation;
- (2) the commissioner of mental health and mental retardation;
- (3) the medical director;

- (4) the deputy commissioner for mental health services;
- (5) the deputy commissioner for mental retardation services; and
- (6) a staff under the direction of the commissioner, medical director, and deputy commissioners.

(b) The department also includes the following facilities:

- (1) the central office of the department;
- (2) the Austin State Hospital;
- (3) the Big Spring State Hospital;
- (4) the Kerrville State Hospital;
- (5) the Rusk State Hospital;
- (6) the San Antonio State Hospital;
- (7) the Terrell State Hospital;
- (8) the Vernon State Hospital;
- (9) the Wichita Falls State Hospital;
- (10) the Abilene State School;
- (11) the Austin State School;
- (12) the Brenham State School;
- (13) the Corpus Christi State School;
- (14) the Denton State School;
- (15) the Fort Worth State School;
- (16) the Lubbock State School;
- (17) the Lufkin State School;
- (18) the Mexia State School;
- (19) the Richmond State School;
- (20) the San Angelo State School;
- (21) the San Antonio State School;
- (22) the Travis State School;
- (23) the Amarillo State Center;
- (24) the Beaumont State Center;
- (25) the El Paso State Center;
- (26) the Harris County Psychiatric Center;
- (27) the Laredo State Center;
- (28) the Leander Rehabilitation Center;
- (29) the Rio Grande State Center; and
- (30) the Waco Center for Youth.

Sec. 532.002. APPLICATION OF SUNSET ACT. The department is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that Act, the department is abolished and this chapter expires September 1, 1999.

Sec. 532.003. COMPOSITION OF BOARD. (a) The board is composed of nine members appointed by the governor with the advice and consent of the senate.

(b) The members must be representatives of the public.

(c) Appointments to the board shall be made without regard to the race, color, handicap, sex, religion, age, or national origin of the appointees.

Sec. 532.004. RESTRICTIONS ON BOARD APPOINTMENT AND MEMBERSHIP AND ON DEPARTMENT EMPLOYMENT. (a) A person is not eligible for appointment as a board member if the person or the person's spouse:

(1) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by the department or receiving funds from the department; or

(2) uses or receives a substantial amount of tangible goods, services, or funds from the department, other than:

(A) compensation or reimbursement authorized by law for board membership, attendance, or expenses; or

(B) as a parent or guardian of a client or patient receiving services from the department.

(b) An officer, employee, or paid consultant of a trade association in the field of mental health or mental retardation may not be a member of the board or an employee of the department.

(c) A person who is the spouse of an officer, employee, or paid consultant of a trade association in the field of mental health or mental retardation may not be a board member or a department employee grade 17 or over, including exempt employees, according to the position classification schedule under the General Appropriations Act.

(d) A person may not serve as a member of the board or act as the general counsel to the department if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the department.

(e) For purposes of this section, a trade association is a nonprofit, cooperative, voluntarily joined association of business or professional competitors designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

Sec. 532.005. TERMS. Board members serve six-year terms.

Sec. 532.006. CHAIRMAN. The governor shall designate a board member as chairman.

Sec. 532.007. REMOVAL OF BOARD MEMBERS. (a) It is a ground for removal from the board if a member:

(1) is not eligible for appointment to the board at the time of appointment as provided by Section 532.004(a);

(2) does not maintain during service on the board the qualifications required by Section 532.004(a);

(3) violates a prohibition established by Section 532.004(b), (c), or (d);

(4) cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability; or

(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year unless the absence is excused by majority vote of the board.

(b) The validity of an action of the board is not affected by the fact that it is taken when a ground for removal of a board member exists.

(c) If the commissioner has knowledge that a potential ground for removal exists, the commissioner shall notify the chairman of the board of the ground. The chairman shall then notify the governor that a potential ground for removal exists.

Sec. 532.008. PROHIBITED ACTIVITIES BY FORMER OFFICERS OR EMPLOYEES. (a) For one year after the date on which a former officer or employee of the department terminates service or employment with the department, the individual may not, directly or indirectly, attempt or aid in the attempt to procure a contract with the department that relates to a program or service in which the individual was directly concerned or for which the individual had administrative responsibility.

(b) This section does not apply to:

(1) a former employee who is compensated on the last date of service or employment below the amount prescribed by the General Appropriations Act for step 1, salary

group 17, of the position classification salary schedule, including a state employee who is exempt from the state's position classification plan; or

(2) a former officer or employee who is employed by another state agency or a community center.

(c) A former officer or employee of the department commits an offense if the former officer or employee violates this section. An offense under this section is a Class A misdemeanor.

Sec. 532.009. REIMBURSEMENT FOR EXPENSES; PER DIEM. A board member is entitled to receive:

(1) reimbursement for actual and necessary expenses incurred in discharging the member's duties; and

(2) the per diem compensation as provided by appropriation for each day the member actually performs official duties.

Sec. 532.010. BOARD MEETINGS. (a) The board shall hold at least four regular meetings each year in the city of Austin on dates set by board rule. The board shall adopt rules that provide for holding special meetings.

(b) A board meeting, other than a meeting to deliberate the appointment of the commissioner, is open to the public.

(c) The board shall adopt policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the board's jurisdiction.

Sec. 532.011. COMMISSIONER. (a) The board shall appoint a commissioner.

(b) To be qualified for appointment as commissioner, a person must have:

(1) professional training and experience in the administration or management of comprehensive health care or human service operations; and

(2) proven administrative and management ability, preferably in the health care area.

(c) The commissioner holds office at the will of the board.

(d) Subject to board rules and basic and general policies, the commissioner:

(1) has the administrative and decisional powers granted under this subtitle; and

(2) shall administer the department and this subtitle and assure the effective administration of the department and its programs and services.

(e) The commissioner shall:

(1) establish qualifications for assistant deputy commissioners and important department personnel that balance clinical and programmatic knowledge and management experience; and

(2) standardize qualifications for personnel positions throughout the department.

(f) With the board's approval, the commissioner shall:

(1) establish an organizational structure within the department that will promote the effective administration of this subtitle; and

(2) establish the duties and functions of the department's staff.

(g) The commissioner is the state mental health authority and the state mental retardation authority.

Sec. 532.012. MEDICAL DIRECTOR. (a) The commissioner shall appoint a medical director, subject to board approval.

(b) To be qualified for appointment as medical director, a person must:

(1) be a physician licensed to practice in this state; and

(2) have proven administrative experience and ability in comprehensive health care or human service operations.

(c) The medical director reports to the commissioner and is responsible for:

(1) the quality and appropriateness of services by developing policies relating to clinical services regulated by the department and those services delivered in department facilities or under contract to the department; and

(2) directing the standards and quality assurance program, a utilization review program, a physician recruitment and retention program, and a peer review program for physicians and other clinical staff employed by or under contract to the department.

Sec. 532.013. DEPUTY COMMISSIONERS. (a) The commissioner shall appoint a deputy commissioner for mental health services and a deputy commissioner for mental retardation services, subject to board approval.

(b) To be qualified for appointment as deputy commissioner for mental health services, a person must:

(1) be a physician licensed to practice in this state;

(2) have completed a three-year residency in psychiatry approved by the American Board of Psychiatry and Neurology; and

(3) have proven administrative abilities in mental health services.

(c) To be qualified for appointment as deputy commissioner for mental retardation services, a person must have proven administrative ability and professional qualifications, including knowledge and at least five years of broad experience in the field of mental retardation.

Sec. 532.014. HEADS OF DEPARTMENTAL FACILITIES. (a) With the board's approval, the commissioner shall appoint the head of each facility the department administers.

(b) The head of a facility serves at the will of the commissioner.

Sec. 532.015. RULES AND POLICIES. (a) The board shall adopt rules and develop basic and general policies to guide the department in administering this subtitle. The rules and policies must be consistent with the purposes, policies, principles, and standards stated in this subtitle.

(b) The board shall adopt policies that clearly define the respective responsibilities of the board and the staff of the department.

Sec. 532.016. PERSONNEL. (a) The commissioner shall develop an intra-agency career ladder program. The program shall require intra-agency posting of all nonentry level positions concurrently with any public posting.

(b) The commissioner shall develop a system of annual job performance evaluations. All merit pay for department employees must be based on the system established under this subsection.

(c) The department shall provide to its members and employees, as often as necessary, information regarding their qualifications under this subtitle and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

(d) The commissioner or the commissioner's designee shall prepare and maintain a written policy statement to assure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, handicap, sex, religion, age, or national origin. The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel;

(2) a comprehensive analysis of the department work force that meets federal and state guidelines; and

(3) procedures by which a determination can be made of significant underutilization in the department work force of all persons for whom federal or state guidelines encourage a more equitable balance and reasonable methods to appropriately address those areas of significant underutilization.

(e) A policy statement prepared under Subsection (d) must:

(1) cover an annual period;

(2) be updated at least annually; and

(3) be filed with the governor.

(f) The governor shall deliver a biennial report to the legislature based on the information received under Subsection (e)(3). The report may be made separately or as a part of other biennial reports made to the legislature.

Sec. 532.017. **ANNUAL REPORTS.** (a) The department shall file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the department during the preceding fiscal year. The report must be in the form and reported in the time provided by the General Appropriations Act.

(b) The report must include the activities of the Interstate Compact on Mental Health, the amount and types of transfers by the department in and out of the state using the compact, and an accounting of any funds received and disbursed by the office of the Interstate Compact on Mental Health Administrator for Texas.

Sec. 532.018. **AUDITS.** (a) The financial transactions of the department are subject to audit by the state auditor in accordance with Chapter 321, Government Code.

(b) The director of the internal audit unit shall report directly to the commissioner.

(c) Each audit report shall be submitted directly to the board.

Sec. 532.019. **PUBLIC INTEREST INFORMATION AND COMPLAINTS.** (a) The department shall prepare information of public interest describing the functions of the department and the procedures by which complaints are filed with and resolved by the department. The department shall make the information available to the public and appropriate state agencies.

(b) The board by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the department for the purpose of directing complaints to the department. The board may provide for that notification:

(1) on each registration form, application, or written contract for services of an entity regulated under this subtitle or of an entity the creation of which is authorized by this subtitle;

(2) on a sign that is prominently displayed in the place of business of each entity regulated under this subtitle or of each entity the creation of which is authorized by this subtitle; or

(3) in a bill for service provided by an entity regulated under this subtitle or by an entity the creation of which is authorized by this subtitle.

(c) If a written complaint is filed with the department relating to an entity regulated by the department, the department, at least quarterly and until final disposition of the complaint, shall notify the complainant and the entity regulated by the department of the status of the complaint unless notice would jeopardize an undercover investigation.

(d) The department shall keep an information file about each complaint filed with the department relating to an entity regulated by the department.

Sec. 532.020. **ADVISORY COMMITTEES.** (a) The board shall appoint a medical advisory committee and any other advisory committees the board considers necessary to assist in the effective administration of the department's mental health and mental retardation programs.

(b) The department may reimburse committee members for travel costs incurred in performing their duties at the rates authorized for state officers and employees under the General Appropriations Act.

Sec. 532.021. **CITIZENS' PLANNING ADVISORY COMMITTEE.** (a) The board shall appoint a citizens' planning advisory committee that is composed of:

(1) three persons who have demonstrated an interest in and knowledge of the department system and the legal, political, and economic environment in which the department operates;

(2) three persons who have expertise in the development and implementation of long-range plans; and

(3) three members of the public.

(b) In addition to the requirements of Subsection (a), at least one member must be a consumer of services for persons with mental illness or a family member of a consumer of those services, and at least one member must be a consumer of services for persons with mental retardation or a family member of a consumer of those services.

(c) The committee shall:

(1) advise the department on all stages of the development and implementation of the long-range plan required by Section 533.032;

(2) review the development, implementation, and any necessary revisions of the long-range plan;

(3) review the department's biennial budget request and assess the degree to which the request allows for implementation of the long-range plan; and

(4) advise the board on:

(A) the appropriateness of the long-range plan;

(B) any identified problems related to the implementation of the plan;

(C) any necessary revisions to the plan; and

(D) the adequacy of the department's budget request.

(d) The board shall review the committee's reports in conjunction with information provided by the department on the long-range plan or the biennial budget request.

(e) The board shall allow the committee opportunities to appear before the board as needed.

(f) Before a board meeting relating to the development, implementation, or revision of the department's long-range plan, the department shall, in a timely manner, provide the committee with any information that will be presented to the board.

(g) Before submitting the department's biennial budget request to the board for discussion or approval, the department shall, in a timely manner, provide the committee with a copy of the budget request.

(h) The department shall provide the committee with the staff support necessary to allow the committee to fulfill its duties.

(i) The committee shall provide copies of its reports to the board, governor, lieutenant governor, speaker of the house of representatives, and appropriate legislative committees.

CHAPTER 533. POWERS AND DUTIES

SUBCHAPTER A. GENERAL POWERS AND DUTIES

Sec. 533.001. GIFTS AND GRANTS

Sec. 533.002. COMPETITIVE REVIEW REQUIREMENT

Sec. 533.003. USE OF FUNDS FOR VOLUNTEER PROGRAMS IN COMMUNITY CENTERS

Sec. 533.004. LIENS

Sec. 533.005. EASEMENTS

Sec. 533.006. REPORTING OF ALLEGATIONS AGAINST PHYSICIAN

Sec. 533.007. ACCESS TO CONVICTION INFORMATION; CRIMINAL PENALTY FOR UNLAWFUL DISCLOSURE

Sec. 533.008. EMPLOYMENT OPPORTUNITIES FOR PATIENTS AND CLIENTS

Sec. 533.009. EXCHANGE OF PATIENT AND CLIENT RECORDS

Sec. 533.010. INFORMATION RELATING TO PATIENT'S CONDITION

Sec. 533.011. RETURN OF PERSON WITH MENTAL RETARDATION TO STATE OF RESIDENCE

Sec. 533.012. COOPERATION OF STATE AGENCIES

Sec. 533.013. SINGLE PORTAL REVIEW COMMITTEE

Sec. 533.014. DESIGNATION OF SINGLE PORTAL AUTHORITIES

[Sections 533.015–533.030 reserved for expansion]

SUBCHAPTER B. POWERS AND DUTIES RELATING TO
PROVISION OF SERVICES

- Sec. 533.031. DEFINITIONS
- Sec. 533.032. LONG-RANGE PLAN
- Sec. 533.033. DETERMINATION OF REQUIRED RANGE OF MENTAL HEALTH SERVICES
- Sec. 533.034. AUTHORITY TO CONTRACT FOR COMMUNITY-BASED SERVICES
- Sec. 533.035. LOCAL MENTAL HEALTH AND MENTAL RETARDATION AUTHORITIES
- Sec. 533.036. REPORT ON APPLICATION FOR SERVICES
- Sec. 533.037. SERVICE PROGRAMS AND SHELTERED WORKSHOPS
- Sec. 533.038. FACILITIES AND SERVICES FOR CLIENTS WITH MENTAL RETARDATION
- Sec. 533.039. GENETIC COUNSELING FEES
- Sec. 533.040. SERVICES FOR CHILDREN AND YOUTH
- Sec. 533.041. SERVICES FOR EMOTIONALLY DISTURBED CHILDREN AND YOUTH
- Sec. 533.042. ANNUAL EVALUATION OF ELDERLY RESIDENTS
- Sec. 533.043. PROPOSALS FOR GERIATRIC, EXTENDED, AND TRANSITIONAL CARE

[Sections 533.044–533.060 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES RELATING TO ICF-MR PROGRAM

- Sec. 533.061. INTERAGENCY COUNCIL ON ICF-MR FACILITIES
- Sec. 533.062. PLAN ON ICF-MR FACILITIES
- Sec. 533.063. REVIEW OF ICF-MR RULES
- Sec. 533.064. MEMORANDUM OF UNDERSTANDING ON ICF-MR SERVICES
- Sec. 533.065. ICF-MR APPLICATION CONSOLIDATION LIST
- Sec. 533.066. INFORMATION RELATING TO ICF-MR PROGRAM

[Sections 533.067–533.080 reserved for expansion]

SUBCHAPTER D. POWERS AND DUTIES RELATING TO
DEPARTMENT FACILITIES

- Sec. 533.081. DEVELOPMENT OF FACILITY BUDGETS
- Sec. 533.082. DETERMINATION OF SAVINGS IN FACILITIES
- Sec. 533.083. CRITERIA FOR EXPANSION, CLOSURE, OR CONSOLIDATION OF FACILITY
- Sec. 533.084. MANAGEMENT OF SURPLUS REAL PROPERTY
- Sec. 533.085. FACILITIES FOR INMATE AND PAROLEE CARE
- Sec. 533.086. USE OF DEPARTMENT FACILITIES BY SUBSTANCE ABUSERS

CHAPTER 533. POWERS AND DUTIES

SUBCHAPTER A. GENERAL POWERS AND DUTIES

Sec. 533.001. GIFTS AND GRANTS. (a) The department may negotiate with a federal agency to obtain grants to assist in expanding and improving mental health and mental retardation services in this state.

(b) The department may accept gifts and grants of money, personal property, and real property to expand and improve the mental health and mental retardation services available to the people of this state.

(c) The department may accept gifts and grants of money, personal property, and real property on behalf of a department facility to expand and improve the mental health or mental retardation services available at the facility.

(d) The department shall use a gift or grant made for a specific purpose in accordance with the purpose expressly prescribed by the donor. The department may decline the gift or grant if the department determines that it cannot be economically used for that purpose.

(e) The department shall keep a record of each gift or grant in the department's central office in the city of Austin.

Sec. 533.002. COMPETITIVE REVIEW REQUIREMENT. (a) The department shall establish procedures to:

- (1) promote more efficient use of public funds;
- (2) ensure periodic review of department management and support activities in order to:
 - (A) improve department operations;
 - (B) improve the determination of costs;
 - (C) increase department productivity; and
 - (D) remain competitive with the private sector; and

(3) ensure that the state not provide a service that is available through the private sector unless the state can provide the service at a lower cost.

(b) In developing the procedures, the department shall comply with Article 13, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes).

Sec. 533.003. USE OF FUNDS FOR VOLUNTEER PROGRAMS IN COMMUNITY CENTERS. (a) To develop or expand volunteer programs in community centers, the department may allocate available funds appropriated for providing volunteer services.

(b) The department shall develop formal policies that encourage the growth and development of volunteer services in community centers.

Sec. 533.004. LIENS. (a) The department and each community center has a lien to secure reimbursement for the cost of providing support, maintenance, and treatment to a patient with mental illness or client with mental retardation in an amount equal to the amount of reimbursement sought.

(b) The amount of the reimbursement sought may not exceed:

(1) the amount the department is authorized to charge under Section 552.017 or under Subchapter D, Chapter 593, if the patient or client received the services in a department facility; or

(2) the amount the community center is authorized to charge under Section 534.017 if the patient or client received the services in a community center.

(c) The lien attaches to:

(1) all nonexempt real and personal property owned or later acquired by the patient or client or by a person legally responsible for the patient's or client's support;

(2) a judgment of a court in this state or a decision of a public agency in a proceeding brought by or on behalf of the patient or client to recover damages for an injury for which the patient or client was admitted to a department facility or community center; and

(3) the proceeds of a settlement of a cause of action or a claim by the patient or client for an injury for which the patient or client was admitted to a department facility or community center.

(d) To secure the lien, the department or community center must file written notice of the lien with the county clerk of the county in which:

(1) the patient or client, or the person legally responsible for the patient's or client's support, owns property; or

(2) the patient or client received or is receiving services.

(e) The notice must contain:

- (1) the name and address of the patient or client;
- (2) the name and address of the person legally responsible for the patient's or client's support, if applicable;
- (3) the period during which the department facility or community center provided services or a statement that services are currently being provided; and
- (4) the name and location of the department facility or community center.

(f) Not later than the 31st day before the date on which the department files the notice of the lien with the county clerk, the department shall notify by certified mail the patient or client and the person legally responsible for the patient's or client's support. The notice must contain a copy of the charges, the statutory procedures relating to filing a lien, and the procedures to contest the charges. The board by rule shall prescribe the procedures to contest the charges.

(g) The county clerk shall record on the written notice the name of the patient or client, the name and address of the department facility or community center, and, if requested by the person filing the lien, the name of the person legally responsible for the patient's or client's support. The clerk shall index the notice record in the name of the patient or client and, if requested by the person filing the lien, in the name of the person legally responsible for the patient's or client's support.

(h) The notice record must include an attachment that contains an account of the charges made by the department facility or community center and the amount due to the facility or center. The superintendent or director of the facility or center must swear to the validity of the account. The account is presumed to be correct, and in a suit to cancel the debt and discharge the lien or to foreclose on the lien, the account is sufficient evidence to authorize a court to render a judgment for the facility or center.

(i) To discharge the lien, the superintendent or director of the department facility or community center or a claims representative of the facility or center must execute and file with the county clerk of the county in which the lien notice is filed a certificate stating that the debt covered by the lien has been paid, settled, or released and authorizing the clerk to discharge the lien. The county clerk shall record a memorandum of the certificate and the date on which it is filed. The filing of the certificate and recording of the memorandum discharge the lien.

Sec. 533.005. EASEMENTS. (a) The department may grant easements to construct water, natural gas, telephone, telegraph, or electric power lines across land held by the department. The department must grant the easements on terms and conditions the department considers to be in the state's best interest.

(b) The department may grant permanent and temporary easements and rights-of-way across department facility land as necessary to ensure the efficient and expeditious construction, improvement, renovation, use, and operation of the facility.

Sec. 533.006. REPORTING OF ALLEGATIONS AGAINST PHYSICIAN. (a) The department shall report to the Texas State Board of Medical Examiners any allegation received by the department that a physician employed by or under contract with the department has committed an action that constitutes a ground for the denial or revocation of the physician's license under Section 3.08, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes). The report must be made in the manner provided by Section 4.02 of that Act.

(b) The department shall provide to the Texas State Board of Medical Examiners a copy of any report or finding relating to an investigation of an allegation reported to that board.

Sec. 533.007. ACCESS TO CONVICTION INFORMATION; CRIMINAL PENALTY FOR UNLAWFUL DISCLOSURE. (a) The department and each community center may receive from a law enforcement agency information about the conviction of:

- (1) a person who is offered employment that would place the person in direct contact with patients with mental illness or clients with mental retardation; or

(2) an employee of a person who contracts with the department or a community center to provide residential services to patients with mental illness or clients with mental retardation who were furloughed or discharged from a department facility if the employee's duties would place the employee in direct contact with the patients or clients.

(b) The department shall establish for department facilities and community centers a uniform method of obtaining the conviction information. The uniform method must require:

(1) either a complete set of fingerprints or the complete name of the person being investigated be submitted to the Department of Public Safety or to another law enforcement agency; and

(2) if fingerprints are submitted, the fingerprints be submitted to the Federal Bureau of Investigation for further information if a relevant disqualifying record or other substantive information is not obtained from a state or local law enforcement agency.

(c) A law enforcement agency may provide to the department or a community center information about the conviction of a person being investigated only if the information is relevant to the person's current or proposed employment and was collected in accordance with this section. The department or community center is not entitled to conviction information that is not relevant. Conviction information is relevant only if it relates to a conviction for:

(1) a sexual offense;

(2) a drug-related offense;

(3) theft; or

(4) murder, assault, battery, or any other offense involving personal injury or threat to another person.

(d) The department or a community center may deny employment to an applicant if:

(1) the department or community center determines that a previous criminal conviction indicates that the applicant is not qualified or suitable; or

(2) the applicant fails to provide a complete set of fingerprints if the department establishes that method of obtaining conviction information.

(e) All conviction information received by the department or a community center is privileged information and is for the exclusive use of the department and the community centers. The information may not be released or otherwise disclosed to any other person or agency, except the information may be released or disclosed:

(1) to the contractor employing the person;

(2) on court order; or

(3) with the consent of the person being investigated.

(f) The department shall collect and destroy conviction information relating to a person immediately after the department or a contractor makes an employment decision or takes any personnel action relating to the person.

(g) A person commits an offense if the person releases or discloses in violation of this section conviction information received by the department or a community center. An offense under this subsection is a felony of the second degree.

(h) The Department of Public Safety is required to provide conviction information to the department or a community center only if a written agreement provides for the reimbursement of the Department of Public Safety for the costs it incurs in providing the information.

Sec. 533.008. EMPLOYMENT OPPORTUNITIES FOR PATIENTS AND CLIENTS.

(a) Each department facility and community center shall annually assess the feasibility of converting entry level support positions into employment opportunities for patients with mental illness and clients with mental retardation in the facility's or center's service area.

(b) In making the assessment, the department facility or community center shall consider the feasibility of using an array of job opportunities that may lead to competitive employment, including sheltered employment and supported employment.

(c) Each department facility and community center shall annually submit to the department a report showing that the facility or center has complied with Subsection (a).

(d) The department shall compile information from the reports and shall make the information available to each designated provider in a service area.

Sec. 533.009. EXCHANGE OF PATIENT AND CLIENT RECORDS. (a) Department facilities, community centers, other designated providers, and subcontractees of mental health and mental retardation services are component parts of one service delivery system within which patient or client records may be exchanged without the patient's or client's consent.

(b) The board shall adopt rules to carry out the purposes of this section.

Sec. 533.010. INFORMATION RELATING TO PATIENT'S CONDITION. (a) A person, including a hospital, sanitarium, nursing or rest home, medical society, or other organization, may provide to the department or a medical organization, hospital, or hospital committee any information, including interviews, reports, statements, or memoranda relating to a person's condition and treatment for use in a study to reduce mental disorders and mental disabilities.

(b) The department or a medical organization, hospital, or hospital committee receiving the information may use or publish the information only to advance mental health and mental retardation research and education in order to reduce mental disorders and mental disabilities. A summary of the study may be released for general publication.

(c) The identity of a person whose condition or treatment is studied is confidential and may not be revealed under any circumstances. Information provided under this section and any finding or conclusion resulting from the study is privileged information.

(d) A person is not liable for damages or other relief if the person:

- (1) provides information under this section;
- (2) releases or publishes the findings and conclusions of the person or organization to advance mental health and mental retardation research and education; or
- (3) releases or publishes generally a summary of a study.

Sec. 533.011. RETURN OF PERSON WITH MENTAL RETARDATION TO STATE OF RESIDENCE. (a) The department may return a nonresident person with mental retardation who is committed to a facility for persons with mental retardation in this state to the proper agency of the person's state of residence.

(b) The department may permit the return of a resident of this state who is committed to a facility for persons with mental retardation in another state.

(c) The department may enter into reciprocal agreements with the proper agencies of other states to facilitate the return of persons committed to facilities for persons with mental retardation in this state or another state to the state of their residence.

(d) The superintendent of a department facility for persons with mental retardation may detain for not more than 96 hours pending a court order in a commitment proceeding in this state a person with mental retardation returned to this state.

(e) The state returning a person with mental retardation to another state shall bear the expenses of returning the person.

Sec. 533.012. COOPERATION OF STATE AGENCIES. At the department's request, all state departments, agencies, officers, and employees shall cooperate with the department in activities that are consistent with their functions.

Sec. 533.013. SINGLE PORTAL REVIEW COMMITTEE. (a) The board shall appoint a single portal review committee composed of:

- (1) two persons representing consumers of mental health services;
- (2) one person representing superintendents of department mental health facilities;
- (3) one person representing directors of community centers;

- (4) one person representing county judges;
 - (5) one person representing police chiefs;
 - (6) one person representing private psychiatric hospitals;
 - (7) one person representing licensed substance abuse facilities; and
 - (8) one person representing practicing private psychiatrists.
- (b) Members serve staggered two-year terms, with the terms of four members expiring every even-numbered year and the terms of five members expiring every odd-numbered year.
- (c) Members receive no compensation but are entitled to reimbursement for actual and necessary expenses incurred in performing official duties.
- (d) The committee shall develop criteria for:
- (1) the types, quantity, and quality of services that must be provided in an area for a local mental health authority to be designated as a single portal authority; and
 - (2) evaluating applications for designation as a single portal authority.
- (e) The criteria must include a requirement that the applicant obtain endorsements from:
- (1) the county judges of the counties in the applicant's service area;
 - (2) the police chief of each municipality in the applicant's service area that is the county seat or that has a population of 2,500 or more; and
 - (3) the superintendent of the department mental health facility serving the area.
- (f) In developing the criteria, the committee shall attempt to reduce duplication by using existing department standards for quality of services, to the extent possible, and by permitting the use of existing inspection reports as evidence of performance. The committee may establish additional criteria or require additional inspections or reports as needed.
- (g) The board by rule shall adopt the criteria the committee develops.
- (h) The department shall provide the committee with necessary staff support and with funds to hire necessary additional staff. The committee may contract with consultants to conduct site visits or may use department staff.
- (i) The committee shall evaluate applications for designation as a single portal authority and shall determine if:
- (1) the applicant meets the criteria for designation; and
 - (2) the necessary core services are available in sufficient quality and quantity in the service area, as measured by criteria established by the committee.
- (j) The committee shall make a recommendation to the board on each application the committee reviews.
- Sec. 533.014. DESIGNATION OF SINGLE PORTAL AUTHORITIES.** (a) The board shall adopt rules that:
- (1) relate to the designation of local mental health authorities as single portal authorities;
 - (2) govern commitments to a single portal authority;
 - (3) govern transfers of patients that involve a single portal authority; and
 - (4) provide for emergency admission to a department mental health facility if obtaining approval from the authority could result in a delay that might endanger the patient or others.
- (b) The board's first consideration in developing rules under this section must be to satisfy individual patient treatment needs in the most appropriate setting. The board shall also consider reducing patient inconvenience resulting from admissions and transfers between providers. The rules must be based on the advice and recommendations of the single portal review committee.

(c) The board may designate a local mental health authority as a single portal authority for a service area if:

(1) the board determines that the authority operates or contracts for the licensed inpatient mental health facilities the board determines are necessary;

(2) the board determines that all core services required by Section 534.053 are available in the service area; and

(3) the single portal review committee:

(A) determines that the core services in the service area are of sufficient quality and quantity as measured by criteria established by the committee;

(B) determines that the local mental health authority meets the criteria set by the single portal review committee, including receiving the endorsement of the application from the county judges and the appropriate police chiefs who have jurisdiction in the applicant's service area and from the superintendent of the department mental health facility serving the area; and

(C) approves the authority's application.

(d) If the board designates a local mental health authority as a single portal authority, the department shall notify each judge who has probate jurisdiction in the service area and any other person the single portal authority considers necessary of the designation and the new procedures required in the area.

[Sections 533.015–533.030 reserved for expansion]

SUBCHAPTER B. POWERS AND DUTIES RELATING TO PROVISION OF SERVICES

Sec. 533.031. DEFINITIONS. In this subchapter:

(1) "Elderly resident" means a person 65 years of age or older residing in a department facility.

(2) "Extended care unit" means a residential unit in a department facility that contains patients with chronic mental illness who require long-term care, maintenance, limited programming, and constant supervision.

(3) "Transitional living unit" means a residential unit that is designed for the primary purpose of facilitating the return of hard-to-place psychiatric patients with chronic mental illness from acute care units to the community through an array of services appropriate for those patients.

Sec. 533.032. LONG-RANGE PLAN. (a) The department shall have a long-range plan covering at least six years that includes at least the following elements:

(1) a statement of the department's mission, goals, and objectives;

(2) quantifiable indicators of effort and success;

(3) an identification of priority populations and the minimum services necessary for those populations;

(4) a description of the appropriate use of facilities, including the role of state hospitals and schools, considering their size, function, and specialization and the criteria for adding needed beds and phasing out uneconomical and unneeded beds;

(5) a description of the service delivery system while the plan is being implemented, including estimates of the number of persons to be served by department facilities and community-based services and the costs of the services; and

(6) a comprehensive assessment of needs and a statewide inventory of resources.

(b) The department shall revise the plan by January 1 of each even-numbered year.

(c) The department shall identify and project the costs related to implementing the plan.

(d) As part of the department's budget preparation process, the department shall biennially assess its achievement of the goals identified in the plan. The department should make each biennial budget request according to the results of the assessment,

with requests for new program funding and continued funding made according to demonstrated need.

(e) The department should develop and maintain a data base appropriate to the planning effort.

Sec. 533.033. DETERMINATION OF REQUIRED RANGE OF MENTAL HEALTH SERVICES. (a) Consistent with the purposes and policies of this subtitle, the commissioner biennially shall determine:

(1) the types of mental health services that can be most economically and effectively provided at the community level for persons exhibiting various forms of mental disability; and

(2) the types of mental health services that can be most economically and effectively provided by department facilities.

(b) In the determination, the commissioner shall assess the limits, if any, that should be placed on the duration of mental health services provided at the community level or at a department facility.

(c) The department biennially shall review the types of services the department provides and shall determine if a community provider can provide services of a comparable quality at a lower cost than the department's costs.

(d) The commissioner's findings shall guide the department in planning and administering services for persons with mental illness.

(e) The commissioner shall report the commissioner's findings to the legislature, the Legislative Budget Board, and the governor's budget office with the department's biennial appropriations request.

Sec. 533.034. AUTHORITY TO CONTRACT FOR COMMUNITY-BASED SERVICES. The department may cooperate, negotiate, and contract with local agencies, hospitals, private organizations and foundations, community centers, physicians, and other persons to plan, develop, and provide community-based mental health and mental retardation services.

Sec. 533.035. LOCAL MENTAL HEALTH AND MENTAL RETARDATION AUTHORITIES. (a) The commissioner shall designate a local mental health and mental retardation authority in each local service area to plan, facilitate, coordinate, and provide mental health and mental retardation services in that service area.

(b) The department by contract or other method of allocation may disburse to a local mental health and mental retardation authority all federal mental health block grant funds and department state funds for community mental health, mental retardation, and substance abuse services to be spent in the local service area.

(c) A local mental health and mental retardation authority, with the department's approval, shall by subcontract or other method of allocation disburse the funds received under Subsection (b) to provide mental health, mental retardation, and substance abuse services in the local service area.

Sec. 533.036. REPORT ON APPLICATION FOR SERVICES. (a) The department shall collect information relating to each application for residential and nonresidential services provided by the department or a mental retardation authority and the department's or authority's response to the application.

(b) The information must include:

(1) the applicant's age, diagnosis, and legal status;

(2) the date on which the department or authority receives the application; and

(3) the date on which the department or authority acts on the application.

(c) The department shall use the information to prepare for the board an annual report on the applications and their disposition. The department may not include information in the report that would disclose an applicant's identity.

(d) The board shall submit copies of the report to the legislature not later than October 1 of each year.

Sec. 533.037. SERVICE PROGRAMS AND SHELTERED WORKSHOPS. (a) The department may provide mental health and mental retardation services through halfway houses, sheltered workshops, community centers, and other mental health and mental retardation services programs.

(b) The department may operate or contract for the provision of part or all of the sheltered workshop services and may contract for the sale of goods produced and services provided by a sheltered workshop program. The goods and services may be sold for cash or on credit.

(c) An operating fund may be established for each sheltered workshop the department operates. Each operating fund must be in a national or state bank that is a member of the Federal Deposit Insurance Corporation.

(d) Money derived from gifts or grants received for sheltered workshop purposes and the proceeds from the sale of sheltered workshop goods and services shall be deposited to the credit of the operating fund. The money in the fund may be spent only in the operation of the sheltered workshop to:

- (1) purchase supplies, materials, services, and equipment;
- (2) pay salaries of and wages to participants and employees;
- (3) construct, maintain, repair, and renovate facilities and equipment; and
- (4) establish and maintain a petty cash fund of not more than \$100.

(e) Money in an operating fund that is used to pay salaries of and wages to participants in the sheltered workshop program is money the department holds in trust for the participants' benefit.

(f) This section does not affect the authority or jurisdiction of a community center as prescribed by Chapter 534.

Sec. 533.038. FACILITIES AND SERVICES FOR CLIENTS WITH MENTAL RETARDATION. (a) The department may designate all or any part of a department facility as a special facility for the diagnosis, special training, education, supervision, treatment, care, or control of clients with mental retardation.

(b) The department may specify the facility in which a client with mental retardation under the department's jurisdiction is placed.

(c) The department may maintain day classes at a department facility for the convenience and benefit of clients with mental retardation of the community in which the facility is located and who are not capable of enrollment in a public school system's regular or special classes.

Sec. 533.039. GENETIC COUNSELING FEES. (a) The department may charge for providing genetic counseling services under this subtitle. The fee may not exceed the actual cost of providing the services.

(b) The department shall use the fees for providing genetic counseling services.

Sec. 533.040. SERVICES FOR CHILDREN AND YOUTH. (a) The department shall ensure the development of programs and the expansion of services at the community level for children with mental illness or mental retardation, or both, and for their families. The department shall:

- (1) prepare and review budgets for services for children;
- (2) develop departmental policies relating to children's programs and service delivery; and
- (3) increase interagency coordination activities to enhance the provision of services for children.

(b) The department shall designate an employee authorized in the department's schedule of exempt positions to be responsible for planning and coordinating services and programs for children and youth. The employee shall perform budget and policy review and provide interagency coordination of services for children and youth.

(c) The department shall designate an employee as a youth suicide prevention officer. The officer shall serve as a liaison to the Central Education Agency and public schools on

matters relating to the prevention of and response to suicide or attempted suicide by public school students.

Sec. 533.041. **SERVICES FOR EMOTIONALLY DISTURBED CHILDREN AND YOUTH.** (a) At each department mental health facility, the department shall make short-term evaluation and diagnostic services available for emotionally disturbed children and youth who are referred to the department by the Texas Department of Human Services if evaluation and diagnostic services for the children and youth are not immediately available through a local mental health authority.

(b) The Texas Department of Human Services may pay for the services according to fees jointly agreed to by both agencies. The department may use payments received under the agreement to contract for community-based residential placements for emotionally disturbed children and youth.

(c) The department shall maintain computerized information on emotionally disturbed children and youth that contains both individual and aggregate information. The purpose of the information is to allow the department to track services and placements and to conduct research on the treatment of the children and youth. The department may coordinate activities with the Texas Department of Human Services in developing the information. The department shall make the information available to the department's mental health facilities and to community centers.

Sec. 533.042. **ANNUAL EVALUATION OF ELDERLY RESIDENTS.** (a) The department shall evaluate each elderly resident at least annually to determine if the resident can be appropriately served in a less restrictive setting.

(b) The department shall consider the proximity to the resident of family, friends, and advocates concerned with the resident's well-being in determining whether the resident should be moved from a department facility or to a different department facility. The department shall recognize that a nursing home may not be able to meet the special needs of an elderly resident.

(c) In evaluating an elderly resident under this section and to ensure appropriate placement, the department shall identify the special needs of the resident, the types of services that will best meet those needs, and the type of facility that will best provide those services.

(d) The treating physician shall conduct the evaluation of an elderly resident of a department mental health facility. The appropriate interdisciplinary team shall conduct the evaluation of an elderly resident of a department mental retardation facility.

(e) The department shall attempt to place an elderly resident in a less restrictive setting if the department determines that the resident can be appropriately served in that setting. The department shall coordinate the attempt with the local mental health and mental retardation authority.

(f) A local mental health or mental retardation authority shall provide continuing care for an elderly resident placed in the authority's service area under this section.

Sec. 533.043. **PROPOSALS FOR GERIATRIC, EXTENDED, AND TRANSITIONAL CARE.** (a) The department shall solicit proposals from community providers to operate:

(1) community residential programs that will provide at least the same services that an extended care unit provides for the population the provider proposes to serve; or

(2) transitional living units that will provide at least the same services that the department traditionally provides in facility-based transitional care units.

(b) The department shall solicit proposals from community providers to operate community residential programs for elderly residents at least every two years.

(c) A proposal for extended care services may be designed to serve all or part of an extended care unit's population.

(d) A proposal to operate transitional living units may provide that the community provider operate the transitional living unit in a community setting or on the grounds of a department facility.

(e) The department shall require each provider to:

- (1) offer adequate assurances of ability to:
 - (A) provide the required services;
 - (B) meet department standards; and
 - (C) safeguard the safety and well-being of each resident; and
- (2) sign a memorandum of agreement with the local mental health or mental retardation authority, as appropriate, outlining the responsibilities for continuity of care and monitoring, if the provider is not the local authority.
- (f) The department may fund a proposal through a contract if the provider agrees to meet the requirements prescribed by Subsection (e) and agrees to provide the services at a cost that is equal to or less than the cost to the department to provide the services.
- (g) The appropriate local mental health or mental retardation authority shall monitor the services provided to a resident placed in a program funded under this section. The department may monitor any service for which it contracts.
- (h) The department is responsible for the care of a patient in an extended care program funded under this section. The department may terminate a contract for extended care services if the program ends or does not provide the required services. The department shall provide the services or find another program to provide the services if the department terminates a contract.

[Sections 533.044–533.060 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES RELATING TO ICF-MR PROGRAM

Sec. 533.061. INTERAGENCY COUNCIL ON ICF-MR FACILITIES. (a) The Inter-agency Council on ICF-MR Facilities is composed of:

- (1) one representative of the following agencies, appointed by the commissioner of the respective agency:
 - (A) Texas Department of Health;
 - (B) Texas Department of Human Services; and
 - (C) Texas Department of Mental Health and Mental Retardation;
- (2) one representative of a community center, appointed by the governor;
- (3) one representative of a private ICF-MR provider, appointed by the governor; and
- (4) two representatives of consumer groups that have an interest in and knowledge of issues relating to persons with mental retardation or developmental disabilities, with one appointed by the lieutenant governor and the other appointed by the speaker of the house of representatives.
- (b) A council member appointed to represent a state agency serves at the pleasure of the appointing commissioner or until termination of the person's employment with the agency. The council members appointed by the governor, lieutenant governor, and speaker of the house of representatives serve two-year terms that expire on February 1 of each odd-numbered year.
- (c) The council shall annually elect one of its members as chairperson.
- (d) The council shall meet at least annually. An action taken by the council must be approved by a majority vote of the members present and voting.
- (e) The council by rule shall establish procedures and policies governing its conduct. The department, Texas Department of Health, and Texas Department of Human Services shall provide staff support to the council.
- (f) Not later than August 30 of each year, the council shall review the plan submitted by the department under Section 533.062, make changes the council considers necessary, and approve the final plan.
- (g) The council shall review any amendments to a plan in operation submitted by the department not later than the 30th day after the date on which the department submits

the amendment. If necessary, the council shall revise the plan not later than the 45th day after the date on which the department submits the amendment.

Sec. 533.062. PLAN ON ICF-MR FACILITIES. (a) The department shall annually plan for the creation of new beds in the ICF-MR program.

(b) The plan must specify the number and levels of new ICF-MR beds to be created in each region. In developing the plan, the department shall consider:

- (1) the needs of the population to be served;
- (2) the resources of the governmental entities responsible for providing services; and
- (3) the requirements of applicable federal law.

(c) Each plan shall cover the subsequent fiscal year. Not later than July 1 of each year, the department shall submit the plan to the Interagency Council on ICF-MR Facilities for approval.

(d) The board by rule shall adopt the plan approved by the Interagency Council on ICF-MR Facilities.

(e) The department may submit to the Interagency Council on ICF-MR Facilities proposed amendments to a plan in operation that the department considers necessary.

Sec. 533.063. REVIEW OF ICF-MR RULES. (a) The department, Texas Department of Health, and Texas Department of Human Services shall meet as necessary to discuss proposed changes in the rules or the interpretation of the rules that govern the ICF-MR program.

(b) The departments shall jointly adopt a written policy interpretation letter that describes the proposed change and shall make a copy of the letter available to providers.

Sec. 533.064. MEMORANDUM OF UNDERSTANDING ON ICF-MR SERVICES. (a) The board and the Texas Department of Human Services by rule shall adopt a memorandum of understanding that specifies the services covered by and the exclusions and limitations of the ICF-MR program.

(b) The board and the Texas Department of Human Services shall review and modify the memorandum as necessary not later than the last month of each state fiscal year.

Sec. 533.065. ICF-MR APPLICATION CONSOLIDATION LIST. (a) The department shall maintain a consolidated list of applications for certification for participation in the ICF-MR program.

(b) The department shall list the applications in descending order using the date on which the department received the completed application.

(c) The department shall approve applications in the order in which the applications are listed.

(d) The department shall notify the Texas Department of Health of each application for a license or for compliance with licensing standards the department approves.

Sec. 533.066. INFORMATION RELATING TO ICF-MR PROGRAM. (a) At least annually, the department, Texas Department of Health, and Texas Department of Human Services shall jointly sponsor a conference on the ICF-MR program to:

- (1) assist providers in understanding survey rules;
- (2) review deficiencies commonly found in ICF-MR facilities; and
- (3) inform providers of any recent changes in the rules or in the interpretation of the rules relating to the ICF-MR program.

(b) The departments also may use any other method to provide necessary information to providers, including publications.

[Sections 533.067–533.080 reserved for expansion]

SUBCHAPTER D. POWERS AND DUTIES RELATING TO
DEPARTMENT FACILITIES

Sec. 533.081. **DEVELOPMENT OF FACILITY BUDGETS.** The department, in budgeting for a facility, shall use uniform costs for specific types of services a facility provides unless a legitimate reason exists and is documented for the use of other costs.

Sec. 533.082. **DETERMINATION OF SAVINGS IN FACILITIES.** (a) The department shall determine the degree to which the costs of operating department facilities for persons with mental illness or mental retardation in compliance with applicable standards are affected as populations in the facilities fluctuate.

(b) In making the determination, the department shall:

(1) assume that the current level of services and necessary state of repair of the facilities will be maintained; and

(2) include sufficient funds to allow the department to comply with the requirements of litigation and applicable standards.

(c) The department shall allocate to community-based mental health programs any savings realized in operating department facilities for persons with mental illness.

(d) The department shall allocate to community-based mental retardation programs any savings realized in operating department facilities for persons with mental retardation.

Sec. 533.083. **CRITERIA FOR EXPANSION, CLOSURE, OR CONSOLIDATION OF FACILITY.** The department shall establish objective criteria for determining when a new facility may be needed and when a facility may be expanded, closed, or consolidated.

Sec. 533.084. **MANAGEMENT OF SURPLUS REAL PROPERTY.** (a) To the extent provided by this subtitle, the department may lease, transfer, or otherwise dispose of any surplus real property, including any improvements under its management and control, or authorize the lease, transfer, or disposal of the property. Surplus property is property the board designates as having minimal value to the present service delivery system and projects to have minimal value to the service delivery system as described in the department's long-range plan.

(b) The proceeds from the lease, transfer, or disposal of surplus real property, including any improvements, shall be deposited to the credit of the department in the Texas capital trust fund established under Article 601e, Revised Statutes. The proceeds and any interest from the proceeds may be appropriated only:

(1) for improvements to the department's system of facilities; and

(2) to fund the community centers facilities construction and renovation fund for improvements and renovations authorized by Sections 534.023 and 534.024.

(c) A lease proposal shall be advertised at least once a week for four consecutive weeks in at least two newspapers. One newspaper must be a newspaper published in the municipality in which the property is located or the daily newspaper published nearest to the property's location. The other newspaper must have statewide circulation. Each lease is subject to the attorney general's approval as to substance and form. The board shall adopt forms, rules, and contracts that, in the board's best judgment, will protect the state's interests. The board may reject any or all bids.

(d) This section does not authorize the department to close or consolidate a facility used to provide mental health or mental retardation services without first obtaining legislative approval.

Sec. 533.085. **FACILITIES FOR INMATE AND PAROLEE CARE.** (a) With the written approval of the governor, the department may contract with:

(1) the institutional division of the Texas Department of Criminal Justice to transfer facilities to that department or otherwise provide facilities for inmates with mental illness or mental retardation in the custody of that department; and

(2) the pardons and paroles division of the Texas Department of Criminal Justice to transfer facilities to that board or otherwise provide facilities for persons with mental illness or mental retardation paroled or released under that board's supervision.

(b) An agency must report to the governor the agency's reasons for proposing to enter into a contract under this section and request the governor's approval.

Sec. 533.086. USE OF DEPARTMENT FACILITIES BY SUBSTANCE ABUSERS.
(a) The department shall annually provide the Texas Commission on Alcohol and Drug Abuse with an analysis by county of the hospitalization rates of persons with substance abuse problems. The analysis must include information indicating which admissions were for persons with only substance abuse problems and which admissions were for persons with substance abuse problems but whose primary diagnoses were other types of mental health problems.

(b) Not later than September 1 of each even-numbered year, the department and the Texas Commission on Alcohol and Drug Abuse shall jointly estimate the number of facility beds that should be maintained for persons with substance abuse problems who cannot be treated in the community.

CHAPTER 534. COMMUNITY SERVICES

SUBCHAPTER A. COMMUNITY CENTERS

- Sec. 534.001. ESTABLISHMENT**
- Sec. 534.002. BOARD OF TRUSTEES FOR CENTER ESTABLISHED BY ONE LOCAL AGENCY**
- Sec. 534.003. BOARD OF TRUSTEES FOR CENTER ESTABLISHED BY AT LEAST TWO LOCAL AGENCIES**
- Sec. 534.004. PROCEDURES RELATING TO BOARD OF TRUSTEES MEMBERSHIP**
- Sec. 534.005. TERMS; VACANCIES**
- Sec. 534.006. EFFECT ON PREVIOUS BOARDS**
- Sec. 534.007. PROHIBITED ACTIVITIES BY FORMER OFFICERS OR EMPLOYEES**
- Sec. 534.008. ADMINISTRATION BY BOARD**
- Sec. 534.009. MEETINGS**
- Sec. 534.010. EXECUTIVE DIRECTOR**
- Sec. 534.011. PERSONNEL**
- Sec. 534.012. ADVISORY COMMITTEES**
- Sec. 534.013. COOPERATION OF DEPARTMENT**
- Sec. 534.014. PLAN FOR SERVICES**
- Sec. 534.015. PROVISION OF SERVICES**
- Sec. 534.016. SCREENING AND CONTINUING CARE SERVICES**
- Sec. 534.017. FEES FOR SERVICES**
- Sec. 534.018. GIFTS AND GRANTS**
- Sec. 534.019. CONTRIBUTION BY LOCAL AGENCY**
- Sec. 534.020. ACQUISITION AND CONSTRUCTION OF PROPERTY AND FACILITIES BY COMMUNITY CENTER**
- Sec. 534.021. APPROVAL AND NOTIFICATION REQUIREMENTS**
- Sec. 534.022. FINANCING OF PROPERTY AND IMPROVEMENTS**
- Sec. 534.023. CONSTRUCTION OF FACILITIES BY DEPARTMENT**
- Sec. 534.024. DEPARTMENT FUNDING FOR FACILITY RENOVATION**
- Sec. 534.025. PRIORITIES FOR FUNDING**
- Sec. 534.026. TERMS OF CONSTRUCTION OR RENOVATION AGREEMENT**
- Sec. 534.027. COMMUNITY CENTERS FACILITIES CONSTRUCTION AND RENOVATION FUND**
- Sec. 534.028. TRANSFER OF TITLE; RELEASE OF LIEN**
- Sec. 534.029. DEFAULT**
- Sec. 534.030. STATE FUNDS**
- Sec. 534.031. SURPLUS PERSONAL PROPERTY**
- Sec. 534.032. RESEARCH**
- Sec. 534.033. LIMITATION ON DEPARTMENT CONTROL AND REVIEW**
- Sec. 534.034. MEMORANDUM OF UNDERSTANDING ON PROGRAM REVIEWS**

[Sections 534.035–534.050 reserved for expansion]

SUBCHAPTER B. COMMUNITY-BASED SERVICES

- Sec. 534.051. DEFINITION
- Sec. 534.052. RULES AND STANDARDS
- Sec. 534.053. REQUIRED COMMUNITY-BASED SERVICES
- Sec. 534.054. DESIGNATED PROVIDERS
- Sec. 534.055. CONTRACTS FOR CERTAIN COMMUNITY SERVICES
- Sec. 534.056. COORDINATION OF ACTIVITIES
- Sec. 534.057. RESPITE CARE
- Sec. 534.058. STANDARDS OF CARE
- Sec. 534.059. PERFORMANCE STANDARDS
- Sec. 534.060. PROGRAM AND SERVICE MONITORING AND REVIEW
- Sec. 534.061. PROGRAM AND SERVICE MONITORING AND REVIEW OF CERTAIN COMMUNITY SERVICES
- Sec. 534.062. REVIEW OF CRISIS RESIDENTIAL AND HOSPITALIZATION SERVICES
- Sec. 534.063. PEER REVIEW ORGANIZATION
- Sec. 534.064. CONTRACT RENEWAL
- Sec. 534.065. RENEWAL OF CERTAIN CONTRACTS FOR COMMUNITY SERVICES
- Sec. 534.066. LOCAL MATCH REQUIREMENT
- Sec. 534.067. FEE COLLECTION POLICY
- Sec. 534.068. AUDITS
- Sec. 534.069. CRITERIA FOR PROVIDING FUNDS FOR START-UP COSTS
- Sec. 534.070. USE OF PROSPECTIVE PAYMENT FUNDS

CHAPTER 534. COMMUNITY SERVICES

SUBCHAPTER A. COMMUNITY CENTERS

Sec. 534.001. ESTABLISHMENT. (a) A county, municipality, hospital district, school district, or an organizational combination of two or more of those local agencies may establish and operate a community center.

(b) A community center may be:

- (1) a community mental health center that provides mental health services;
- (2) a community mental retardation center that provides mental retardation services;
- or
- (3) a community mental health and mental retardation center that provides mental health and mental retardation services.

(c) A community center is:

- (1) a state agency, governmental unit, and unit of local government, as defined and specified by Chapters 101 and 102, Civil Practice and Remedies Code; and
- (2) a local government, as defined by Section 3, The Interlocal Cooperation Act (Article 4413(32c), Vernon's Texas Civil Statutes).

(d) A community center may be established only if the department approves the proposed center's plan to deliver mental health or mental retardation services and determines that the center can appropriately, effectively, and efficiently provide those services in the region. A community center established under this section may operate only for the purposes defined in the center's plan. The board by rule shall specify the elements that must be included in a plan and shall prescribe the procedure for submitting and approving a center's plan.

Sec. 534.002. BOARD OF TRUSTEES FOR CENTER ESTABLISHED BY ONE LOCAL AGENCY. The board of trustees of a community center established by one local agency is composed of:

(1) the local agency's governing body; or

(2) not fewer than five or more than nine qualified voters who reside in the region to be served by the center and who are appointed by the local agency's governing body.

Sec. 534.003. BOARD OF TRUSTEES FOR CENTER ESTABLISHED BY AT LEAST TWO LOCAL AGENCIES. (a) The board of trustees of a community center established by an organizational combination of local agencies is composed of not fewer than five or more than nine members.

(b) The governing bodies of the local agencies shall appoint the board members either from among the membership of the governing bodies or from among the qualified voters who reside in the region to be served by the center.

(c) When the center is established, the governing bodies shall enter into a contract that stipulates the number of board members and the group from which the members are chosen. They may renegotiate or amend the contract as necessary to change the method of choosing the members.

Sec. 534.004. PROCEDURES RELATING TO BOARD OF TRUSTEES MEMBERSHIP. The local agency or organizational combination of local agencies that establishes a community center shall prescribe:

(1) the application procedure for a position on the board of trustees;

(2) the procedure and criteria for making appointments to the board of trustees;

(3) the procedure for posting and filling a vacancy on the board of trustees; and

(4) the procedure for removing a member of the board of trustees.

Sec. 534.005. TERMS; VACANCIES. (a) Appointed members of the board of trustees who are not members of a local agency's governing body serve staggered two-year terms. In appointing the initial members, the appointing authority shall designate not less than one-third or more than one-half of the members to serve one-year terms and shall designate the remaining members to serve two-year terms.

(b) A vacancy on a board of trustees composed of qualified voters is filled by appointment for the remainder of the unexpired term.

Sec. 534.006. EFFECT ON PREVIOUS BOARDS. (a) This subchapter does not affect the validity of:

(1) a community center or board of trustees established or appointed before September 1, 1969; or

(2) a board selection committee appointed by an organizational combination of more than six local agencies under Section 3.02(a), Chapter 67, Acts of the 59th Legislature, Regular Session, 1965, as it read preceding September 1, 1969.

(b) A community center or board of trustees established or appointed under prior law may be reorganized to comply with this subchapter.

Sec. 534.007. PROHIBITED ACTIVITIES BY FORMER OFFICERS OR EMPLOYEES. (a) For one year after the date on which a former officer or employee of a community center terminates service or employment with the center, the individual may not, directly or indirectly, attempt or aid in the attempt to procure a contract with the community center in which the individual served or was employed if the contract relates to a program or service in which the individual was directly concerned or for which the individual had administrative responsibility.

(b) This section does not apply to:

(1) a former employee who is compensated on the last date of service or employment below the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule; or

(2) a former officer or employee who is employed by a state agency or another community center.

(c) A former officer or employee of a community center commits an offense if the former officer or employee violates this section. An offense under this section is a Class A misdemeanor.

Sec. 534.008. **ADMINISTRATION BY BOARD.** (a) The board of trustees shall administer the community center.

(b) The board of trustees shall make policies that are consistent with the department's rules and standards.

Sec. 534.009. **MEETINGS.** (a) The board of trustees shall adopt rules for the holding of regular and special meetings.

(b) Board meetings are open to the public to the extent required by and in accordance with the open meetings law (Article 6252-17, Vernon's Texas Civil Statutes).

(c) The board of trustees shall keep a record of its proceedings. The record is open for public inspection.

Sec. 534.010. **EXECUTIVE DIRECTOR.** (a) The board of trustees shall appoint an executive director for the community center.

(b) The executive director has the powers delegated by the board of trustees. Those powers are subject to the policy direction of the board of trustees.

Sec. 534.011. **PERSONNEL.** (a) The board of trustees or executive director may:

(1) employ personnel to administer the community center's programs and services; and

(2) recruit and train those personnel and contract for that purpose.

(b) The board of trustees shall adopt standardized qualifications for personnel positions for the community center that are consistent with the standards developed by the commissioner under Section 532.011(e).

(c) The board of trustees shall provide employees of the community center with appropriate rights, privileges, and benefits that are consistent with the rights, privileges, and benefits available to employees of the local agencies that establish the center.

(d) The board of trustees may provide workers' compensation benefits.

(e) The board of trustees shall prescribe the number of employees and their salaries, subject to the commissioner's approval.

Sec. 534.012. **ADVISORY COMMITTEES.** (a) The board of trustees may appoint committees, including medical committees, to advise the board of trustees on matters relating to the administration of mental health and mental retardation services.

(b) Each committee must be composed of at least five members.

(c) The appointment of a committee does not relieve the board of trustees of the final responsibility and accountability as provided by this subtitle.

Sec. 534.013. **COOPERATION OF DEPARTMENT.** The department shall provide assistance, advice, and consultation to local agencies, boards of trustees, and executive directors in the planning, development, and operation of a community center.

Sec. 534.014. **PLAN FOR SERVICES.** As soon as possible after a community center is established, the board of trustees shall submit to the department:

(1) a copy of the contract between the participating local agencies, if applicable; and

(2) a plan, within the projected financial, physical, and personnel resources of the region to be served, to develop and make available to the region's residents an effective mental health or mental retardation services program, or both, through one or more community centers.

Sec. 534.015. **PROVISION OF SERVICES.** (a) The board of trustees may adopt rules to regulate the administration of mental health or mental retardation services by a community center. The rules must be consistent with the purposes, policies, principles, and standards prescribed by this subtitle.

(b) The board of trustees may contract with a local agency or a qualified person or organization to provide a portion of the mental health or mental retardation services.

(c) With the commissioner's approval, the board of trustees may contract with the governing body of another county or municipality to provide mental health and mental retardation services to residents of that county or municipality.

(d) A community center may provide services to a person who voluntarily seeks assistance or who has been committed to that center.

Sec. 534.016. SCREENING AND CONTINUING CARE SERVICES. (a) A community center shall provide screening services for a person who requests voluntary admission to a department facility for persons with mental illness and for a person for whom proceedings for involuntary commitment to a department facility have been initiated.

(b) A community center shall provide continuing mental health and physical care services for a person referred to the center by a department facility and for whom the facility superintendent has recommended a continuing care plan.

(c) Services provided under this section must be consistent with the department's rules and standards.

(d) The commissioner may designate a facility other than the community center to provide the screening or continuing care services if:

(1) local conditions indicate that the other facility can provide the services more economically and effectively; or

(2) the commissioner determines that local conditions may impose an undue burden on the community center.

Sec. 534.017. FEES FOR SERVICES. (a) A community center shall charge reasonable fees to cover the cost of services the center provides, unless prohibited by other service contracts or law.

(b) The community center may not deny services to a person because of inability to pay for the services.

(c) The community center has the same rights, privileges, and powers for collecting fees for treating patients and clients that the department has by law.

(d) The county or district attorney of the county in which the community center is located shall represent the center in collecting fees when the center's executive director requests the assistance.

Sec. 534.018. GIFTS AND GRANTS. A community center may accept gifts and grants of money, personal property, and real property to use in administering the center's programs and services.

Sec. 534.019. CONTRIBUTION BY LOCAL AGENCY. A participating local agency may contribute land, buildings, facilities, personnel, and funds to administer the community center's programs and services.

Sec. 534.020. ACQUISITION AND CONSTRUCTION OF PROPERTY AND FACILITIES BY COMMUNITY CENTER. A community center may purchase or lease real and personal property and may construct buildings and facilities.

Sec. 534.021. APPROVAL AND NOTIFICATION REQUIREMENTS. (a) A community center must receive from the department prior written approval to acquire real property, including a building, if the acquisition involves the use of department funds or local funds required to match department funds.

(b) A community center must notify the department not later than the 61st day before it enters into a binding obligation to acquire real property, including a building, if the acquisition does not involve the use of department funds or local funds required to match department funds. The commissioner, on request, may waive the 60-day requirement on a case-by-case basis.

(c) The board shall adopt rules relating to the approval and notification process.

Sec. 534.022. FINANCING OF PROPERTY AND IMPROVEMENTS. (a) To acquire real and personal property or to construct improvements to property, a community center may contract in accordance with Subchapter A, Chapter 271, Local Government Code, or issue bonds or notes.

(b) The community center shall issue the bonds or notes in accordance with the Bond Procedures Act of 1981 (Article 717k-6, Vernon's Texas Civil Statutes), and Chapter 656, Acts of the 68th Legislature, Regular Session, 1983 (Article 717q, Vernon's Texas Civil Statutes). The attorney general must approve the bonds or notes before issuance.

(c) A limitation prescribed in Subchapter A, Chapter 271, Local Government Code, relating to real property and the construction of improvements to real property, does not apply to a community center.

Sec. 534.023. CONSTRUCTION OF FACILITIES BY DEPARTMENT. (a) The department and a community center may agree that:

- (1) the community center transfer ownership of real property to the department;
- (2) the department construct a community-based care or alternative living facility on the property; and
- (3) the department lease the constructed facility to the community center to provide mental health and mental retardation services.

(b) The agreement must include a provision for a lease-purchase arrangement among the community center, the governing body of each local agency establishing the center, and the department.

(c) The department may construct a facility at a site other than the present site of a department facility.

Sec. 534.024. DEPARTMENT FUNDING FOR FACILITY RENOVATION. (a) A community center may request money from the department to renovate a building or facility the community center owns or leases.

(b) The department may provide renovation money under an agreement in which the community center repays the money and the department obtains a lien against the center's buildings or facilities in an amount equal to the amount to be repaid.

(c) The agreement must include a provision authorizing the department to withhold state contract funds if the community center fails to make timely payments.

Sec. 534.025. PRIORITIES FOR FUNDING. (a) The board shall establish priorities for the use of facilities constructed under Section 534.023 or renovated under Section 534.024 and that relate to the appropriate types of community-based services and alternative living arrangements for persons with mental disabilities.

(b) The department shall use criteria based on those priorities to determine the eligibility of a proposal for facility construction or renovation.

Sec. 534.026. TERMS OF CONSTRUCTION OR RENOVATION AGREEMENT. (a) In an agreement to construct a facility under Section 534.023 or to renovate a facility under Section 534.024, the department shall specify the lease or loan payments that include the amortization of the cost of the facility or renovation for not more than 40 years.

(b) The agreement may provide for reasonable interest to be paid by the community center on the total cost of the facility or renovation. The rate of interest may not exceed 50 percent of the market interest rate, as determined by the department, that a local agency that established the community center would pay at the time the agreement is made if the agency issued revenue bonds to construct or renovate the facility payable for the same period as the period of the agreement to construct or renovate the facility.

Sec. 534.027. COMMUNITY CENTERS FACILITIES CONSTRUCTION AND RENOVATION FUND. (a) The community centers facilities construction and renovation fund is in the state treasury.

(b) The fund may be used only to finance:

- (1) the construction of facilities by the department under Section 534.023; and
- (2) the renovation of buildings and facilities by community centers under Section 534.024.

(c) Lease payments made by a community center under Section 534.023 shall be credited to the fund and applied to the purchase of the facility by the community center.

(d) Payments made by a community center under Section 534.024 shall be credited to the fund and applied to repayment of the renovation funding and release of the lien.

Sec. 534.028. TRANSFER OF TITLE; RELEASE OF LIEN. (a) When a community center has paid to the department the amount specified under the terms of a lease-pur-

chase agreement made under Section 534.023, the department shall transfer to the center full title to the property and all improvements.

(b) When a community center has paid to the department the amount specified under the terms of a renovation agreement made under Section 534.024, the department shall release the lien against the center's buildings or facilities.

Sec. 534.029. **DEFAULT.** (a) The department shall send to a community center that does not make a payment to the department by the due date established in the lease-purchase or renovation funding agreement a written notice of default and a statement that the center must make the overdue payments not later than the 60th day after the date on which the center receives the notice.

(b) If the community center does not make overdue lease-purchase payments within the 60-day period, the lease-purchase agreement is terminated, and the department may take possession of the facility.

(c) If the community center does not make overdue renovation funding payments within the 60-day period, the department may:

- (1) withhold state contract funds in the amount of the overdue payments; or
- (2) terminate the renovation funding agreement and sue to foreclose on the lien.

Sec. 534.030. **STATE FUNDS.** (a) A community center may use state funds, including state contract funds, to operate a facility. The total amount of state funds used in the actual operation of the facility may not exceed an amount equal to 60 percent of the facility's total operating budget.

(b) In determining a facility's total operating budget, a community center may not include lease-purchase payments or renovation funding repayments.

(c) A community center may not use state funds to make lease-purchase payments or renovation funding repayments.

(d) The construction, renovation, or operation of a facility under Sections 534.023–534.029 does not constitute grounds for a community center to receive contract funds that are in addition to the contract funds the center would otherwise receive under the board's rules governing distribution of those funds.

Sec. 534.031. **SURPLUS PERSONAL PROPERTY.** The department may transfer, with or without reimbursement, ownership and possession of surplus personal property under the department's control or jurisdiction to a community center for use in providing mental health or mental retardation services.

Sec. 534.032. **RESEARCH.** A community center may engage in research and may contract for that purpose.

Sec. 534.033. **LIMITATION ON DEPARTMENT CONTROL AND REVIEW.** (a) It is the intent of the legislature that the department limit its control over, and routine reviews of, community center programs to those programs that:

- (1) use state funds or use required local funds that are matched with state funds;
- (2) provide core or required services;
- (3) provide services to former clients or patients of a department facility; or
- (4) are affected by litigation in which the department is a defendant.

(b) The department may review any community center program if the department has reason to suspect that a violation of a department rule has occurred or if the department receives an allegation of patient or client abuse.

(c) The department may determine whether a particular program uses state funds or uses required local matching funds.

Sec. 534.034. **MEMORANDUM OF UNDERSTANDING ON PROGRAM REVIEWS.** (a) The department shall identify each state agency that reviews the services or programs of a community center.

(b) The department, the Texas Department of Human Services, the Texas Rehabilitation Commission, the Texas Commission on Alcohol and Drug Abuse, the Texas Department of Health, the Central Education Agency, the Texas State Board of Pharmacy, and

any other agency identified by the department under Subsection (a) shall by rule adopt a joint memorandum of understanding to maximize the use of each agency's reviews by eliminating duplication of program reviews unless duplicative reviews are necessary to comply with federal funding requirements.

(c) The joint memorandum may not reduce the degree of a community center's accountability to a state agency for the expenditure of funds that the community center receives from that agency.

(d) The department and the other agencies shall review and by rule revise the joint memorandum not later than the last month of each fiscal year.

[Sections 534.035–534.050 reserved for expansion]

SUBCHAPTER B. COMMUNITY-BASED SERVICES

Sec. 534.051. **DEFINITION.** In this subchapter, "mental health or mental retardation authority" includes a designated provider or a departmental facility outreach program.

Sec. 534.052. **RULES AND STANDARDS.** (a) The board shall adopt rules, including standards, the board considers necessary and appropriate to ensure the adequate provision of community-based mental health and mental retardation services by department facility outreach programs or by community centers and other providers receiving contract funds as designated providers under this subchapter.

(b) The department shall send a copy of the rules to each department facility outreach program and to each designated provider.

Sec. 534.053. **REQUIRED COMMUNITY-BASED SERVICES.** (a) The department shall ensure that, at a minimum, the following services are available in each service area:

- (1) 24-hour emergency screening and rapid crisis stabilization services;
- (2) community-based crisis residential services or hospitalization;
- (3) community-based assessments, including the development of interdisciplinary treatment plans and diagnosis and evaluation services;
- (4) family support services, including respite care;
- (5) case management services;
- (6) medication-related services, including medication clinics, laboratory monitoring, medication education, mental health maintenance education, and the provision of medication; and
- (7) psychosocial rehabilitation programs, including social support activities, independent living skills, and vocational training.

(b) The department shall arrange for appropriate community-based services, including the assignment of a case manager, to be available in each service area for each person discharged from a department facility who is in need of care.

(c) To the extent that resources are available, the department shall:

- (1) ensure that the services listed in this section are available for children, including adolescents, as well as adults, in each service area; and
- (2) emphasize early intervention services for children, including adolescents, who meet the department's definition of being at high risk of developing severe emotional disturbances or severe mental illnesses.

Sec. 534.054. **DESIGNATED PROVIDERS.** (a) The department shall identify and contract with one or more designated providers for each service area. A designated provider shall provide, directly or by subcontract, services to address the needs of priority populations as required by the department and shall comply with the rules and standards adopted under Section 534.052.

(b) In identifying a designated provider, the department shall give preference to a community center located in that service area.

(c) The department may contract with a local agency or a private provider or organization to act as a designated provider for a service area if the department:

(1) cannot negotiate a contract with a community center to ensure that specific required services for priority populations are available in that service area; or

(2) determines that a center does not have the capacity to ensure the availability of the services.

(d) The department shall provide the required services in a service area directly through a department facility outreach program if the department cannot identify and contract with a designated provider in that service area.

Sec. 534.055. **CONTRACTS FOR CERTAIN COMMUNITY SERVICES.** (a) A mental health or mental retardation authority and a private provider shall use a contract designed by the department as a model contract for the provision of services at the community level for persons with mental retardation or mental illness, including residential services, if the contract involves the use of state funds or funds for which the state has oversight responsibility.

(b) The department shall design one or more model contracts and shall retain copies of each model contract in the central office of the department.

(c) A model contract must:

(1) require that the services provided by the private provider be based on the patient's or client's individual treatment plan;

(2) provide that a community-based residential facility that is a family home as defined in the Community Homes for Disabled Persons Location Act (Article 1011n, Vernon's Texas Civil Statutes) may house only disabled persons as defined in Section 2 of that Act; and

(3) prohibit the use of the facility for purposes such as restitution centers, homes for substance abusers, or halfway houses.

(d) The department shall design a competitive procurement or similar system that a mental health or mental retardation authority shall use in awarding an initial contract under this section. To facilitate continuity of services and to prevent disruption of services, a mental health or mental retardation authority may not require competitive bidding on the renewal of a contract.

(e) The system must require that each mental health or mental retardation authority:

(1) make a reasonable effort to give notice of the intent to contract for services to each potential private provider in the local service area of the authority; and

(2) review each submitted proposal and award the contract to the applicant that the authority determines has made the lowest and best bid to provide the needed services.

(f) Each mental health or mental retardation authority, in determining the lowest and best bid, shall consider any relevant information included in the authority's request for bid proposals, including:

(1) price;

(2) the ability of the bidder to perform the contract and to provide the required services;

(3) whether the bidder can perform the contract or provide the services within the period required, without delay or interference;

(4) the bidder's history of compliance with the laws relating to the bidder's business operations and the affected services and whether the bidder is currently in compliance;

(5) whether the bidder's financial resources are sufficient to perform the contract and to provide the services;

(6) whether necessary or desirable support and ancillary services are available to the bidder;

(7) the character, responsibility, integrity, reputation, and experience of the bidder;

(8) the quality of the facilities and equipment available to or proposed by the bidder;

(9) the ability of the bidder to provide continuity of services; and

(10) the ability of the bidder to meet all applicable written departmental policies, principles, and regulations.

Sec. 534.056. COORDINATION OF ACTIVITIES. A designated provider shall coordinate its activities with the activities of other appropriate agencies that provide care and treatment for persons with drug or alcohol problems.

Sec. 534.057. RESPITE CARE. (a) The board shall adopt rules relating to the provision of respite care and shall develop a system to reimburse providers of in-home respite care.

(b) The rules must:

(1) encourage the use of existing local providers;

(2) encourage family participation in the choice of a qualified provider;

(3) establish procedures necessary to administer this section, including procedures for:

(A) determining the amount and type of in-home respite care to be authorized;

(B) reimbursing providers;

(C) handling appeals from providers;

(D) handling complaints from recipients of in-home respite care;

(E) providing emergency backup for in-home respite care providers; and

(F) advertising for, selecting, and training in-home respite care providers; and

(4) specify the conditions and provisions under which a provider's participation in the program can be canceled.

(c) The board shall establish service and performance standards for department facilities and designated providers to use in operating the in-home respite care program. The board shall establish the standards from information obtained from the families of patients and clients receiving in-home respite care and from providers of in-home respite care. The board may obtain the information at a public hearing or from an advisory group.

(d) The service and performance standards established by the board under Subsection (c) must:

(1) prescribe minimum personnel qualifications the board determines are necessary to protect health and safety;

(2) establish levels of personnel qualifications that are dependent on the needs of the patient or client; and

(3) permit a health professional with a valid Texas practitioner's license to provide care that is consistent with the professional's training and license without requiring additional training unless the board determines that additional training is necessary.

Sec. 534.058. STANDARDS OF CARE. (a) The department shall develop standards of care for the services provided by a department facility outreach program or by a designated provider and its subcontractors under this subchapter.

(b) The standards must be designed to ensure that the quality of the community-based services is consistent with the quality of care available in department facilities.

(c) In conjunction with designated providers, the department shall review the standards biennially to determine if each standard is necessary to ensure the quality of care.

Sec. 534.059. PERFORMANCE STANDARDS. The department shall specify performance standards, including measures of results, to use in evaluating the compliance of a department facility outreach program or designated provider with its obligation or contract to provide specific services to priority populations.

Sec. 534.060. PROGRAM AND SERVICE MONITORING AND REVIEW. (a) The department shall develop mechanisms for monitoring the services provided by a department facility outreach program or by a designated provider and the provider's subcontractors.

(b) The department shall review the program quality and program performance results of each department facility outreach program or designated provider at least once each fiscal year. The department may determine the scope of each review.

(c) Each designated provider contract must authorize the department to have unrestricted access to all facilities, records, data, and other information under the control of the provider or the provider's subcontractors as necessary to enable the department to audit, monitor, and review the financial and program activities and services associated with the contract.

Sec. 534.061. PROGRAM AND SERVICE MONITORING AND REVIEW OF CERTAIN COMMUNITY SERVICES. (a) The department shall develop mechanisms for periodically monitoring the services provided by a private provider who contracts with a mental health or mental retardation authority to provide services for persons with mental retardation or mental illness at the community level, including residential services, if state funds or funds for which the state has oversight responsibility are used to pay for at least part of the services.

(b) The department shall monitor the services to ensure that the private provider is delivering the services in a manner consistent with the contract. The department shall also provide for periodic fiscal audits of those private providers.

(c) Each private provider contract involving the use of state funds or funds for which the state has oversight responsibility must authorize the department or the department's designee to have unrestricted access to all facilities, records, data, and other information under the control of the provider as necessary to enable the department to audit, monitor, and review the financial and program activities and services associated with the contract.

(d) The department may withdraw funding from a mental health or mental retardation authority if the authority fails to cancel a contract with a private provider that involves the use of state funds or funds for which the state has oversight responsibility if the private provider is not fulfilling its contractual obligations and the authority does not take appropriate action to remedy the problem in accordance with board rules.

(e) The board by rule shall prescribe procedures a mental health or mental retardation authority must follow in remedying a problem with a private provider.

Sec. 534.062. REVIEW OF CRISIS RESIDENTIAL AND HOSPITALIZATION SERVICES. (a) As a condition to receiving contract funds under this subtitle, the board of trustees of a community center must review the method by which the center provides the crisis residential or hospitalization services, or both, required under Section 534.053(a)(2).

(b) The board of trustees shall conduct the review every two years before a contract is due for renewal. The community center shall submit information to the department describing the review process and the results of the review before a contract is due for renewal.

(c) The board of trustees shall conduct the review in accordance with department rules. The review must include at least:

(1) an efficiency and performance review to identify the quantity and quality of services that are necessary in the next contract period;

(2) bid specifications for the quantity and quality of services identified under Subdivision (1);

(3) an estimate of the total cost to the community center to provide or contract for the identified services in accordance with the bid specifications and using the most efficient means identified;

(4) a solicitation of bids from qualified providers based on the developed bid specifications; and

(5) an analysis of the submitted bids and a comparison of those bids with the center's estimate under Subdivision (3) of the total cost to provide or contract for the services.

(d) In determining the estimate of the total cost to the community center required by Subsection (c)(3) and the analysis of submitted bids required by Subsection (c)(5), the center shall use the method of service delivery that the center is using in the current

contract period. In determining the estimate of the total cost, the center may also include modifications to the existing operations.

(e) The board by rule shall establish procedures and standards for community centers to use in conducting the review required by this section, including consistent standards for:

- (1) the development of bid specifications;
- (2) the center's estimate of the total cost to continue the existing method of service delivery; and
- (3) the analysis of the bids submitted and the comparison of those bids with the center's estimate.

(f) Before the department may renew a contract with a community center, the department must require the center to demonstrate that the center is providing crisis residential or hospitalization services, or both, using the method or provider that provides the services in compliance with department contracts and standards and at the lowest cost. The demonstration must be based on the review required by this section.

Sec. 534.063. PEER REVIEW ORGANIZATION. The department shall assist a designated provider in developing a peer review organization to provide self-assessment of programs and to supplement department reviews under Section 534.060.

Sec. 534.064. CONTRACT RENEWAL. The commissioner shall refuse to renew a contract with a designated provider and shall select a new designated provider if the department's evaluation of the provider's performance indicates that the provider cannot ensure the availability of the specific services to priority populations required by the department and this subtitle.

Sec. 534.065. RENEWAL OF CERTAIN CONTRACTS FOR COMMUNITY SERVICES. (a) A mental health or mental retardation authority shall review a contract scheduled for renewal that:

- (1) is between the authority and a private provider;
- (2) is for the provision of mental health or mental retardation services at the community level, including residential services; and
- (3) involves the use of state funds or funds for which the state has oversight responsibility.

(b) The mental health or mental retardation authority shall renew the contract if the authority finds that:

- (1) funding is available;
- (2) the authority plans to continue the services;
- (3) the provider is in substantial compliance with each material provision of the contract, unless the authority determines that the provision is not legal and enforceable under applicable state and federal law;
- (4) the provider is providing a reasonably adequate level of service in accordance with the contract;
- (5) the provider agrees to a renewal contract that is substantially in compliance with a model contract developed by the department under Section 534.055;
- (6) the provider was during the term of any contract with the authority and is at the time of renewal in compliance with applicable laws governing the subject matter of the contract; and

(7) neither the provider nor any of its officers, directors, or principal employees has been convicted or found by a final administrative decision to have been guilty of fraud or abuse in the provision of health care services under a contract with a state or federal agency.

(c) The mental health or mental retardation authority and private provider shall negotiate a contract renewal at arms length and in good faith.

(d) This section applies to a contract renewal regardless of the date on which the original contract was initially executed.

Sec. 534.066. LOCAL MATCH REQUIREMENT. (a) The department may include in a contract with a designated provider a requirement that some or all of the state funds the provider receives be matched by local support in an amount or proportion determined by the department.

(b) The department shall establish, for department facility outreach programs that provide community-based services required under this subchapter, a local match requirement that is consistent with the requirements applied to designated providers.

(c) A requirement of a local match under this section must apply uniformly to each provider or contractor in a service area.

(d) Patient fee income, services and facilities contributed by the provider, contributions by a county or municipality, and other locally generated contributions may be counted as local support when calculating the local share of the operating costs of a department facility outreach program or a designated provider.

Sec. 534.067. FEE COLLECTION POLICY. The department shall establish a uniform fee collection policy for community centers and other designated providers that is equitable, provides for collections, and maximizes contributions to local revenue.

Sec. 534.068. AUDITS. (a) As a condition to receiving contract funds under this subtitle, the board of trustees of a community center or the administrative authority of a designated provider other than a center must annually have the center's or provider's accounts audited by a certified public accountant or public accountant licensed by the Texas State Board of Public Accountancy.

(b) The audit must meet the minimum requirements as shall be, and be in the form as may be, prescribed by the department and approved by the state auditor.

(c) The community center or other designated provider shall file a copy of the audit report with the department by the date prescribed by the department. The center or provider shall also submit copies of the report to the governor, Legislative Budget Board, and Legislative Audit Committee.

(d) The board of trustees or administrative authority shall either approve or refuse to approve the audit report. If the board or authority refuses to approve the report, the board or authority shall include with the department's copy a statement detailing the reasons for refusal.

(e) The commissioner and state auditor have access to all vouchers, receipts, journals, or other records the commissioner or auditor considers necessary to review and analyze the audit report.

Sec. 534.069. CRITERIA FOR PROVIDING FUNDS FOR START-UP COSTS. (a) The board by rule shall develop criteria to regulate the provision of payment to a private provider for start-up costs associated with the development of residential and other community services for persons with mental illness or mental retardation.

(b) The criteria shall provide that start-up funds be awarded only as a last resort and shall include provisions relating to:

(1) the purposes for which start-up funds may be used;

(2) the ownership of capital property and equipment obtained by the use of start-up funds; and

(3) the obligation of the private provider to repay the start-up funds awarded by the department by direct repayment or by providing services for a period agreed to by the parties.

Sec. 534.070. USE OF PROSPECTIVE PAYMENT FUNDS. (a) Each mental health or mental retardation authority that receives prospective payment funds shall submit to the department a quarterly report that clearly identifies how the provider or program used the funds during the preceding fiscal quarter.

(b) The board by rule shall prescribe the form of the report, the specific information that must be included in the report, and the deadlines for submitting the report.

(c) The department may not provide prospective payment funds to a mental health or mental retardation authority that fails to submit the quarterly reports required by this section.

(d) In this section “prospective payment funds” means money the department prospectively provides to a mental health or mental retardation authority to provide community services to certain persons with mental retardation or mental illness.

CHAPTER 535. SUPPORT SERVICES

SUBCHAPTER A. ASSISTANCE FOR PERSONS WITH MENTAL DISABILITIES

- Sec. 535.001. DEFINITIONS
- Sec. 535.002. ADOPTION OF RULES AND IMPLEMENTATION OF PROGRAM
- Sec. 535.003. ELIGIBILITY
- Sec. 535.004. PROVISION OF ASSISTANCE AND SUPPORT SERVICES
- Sec. 535.005. SUPPORT SERVICES FOR CERTAIN CLIENTS
- Sec. 535.006. LIMITATION OF DUTY
- Sec. 535.007. PAYMENT OF ASSISTANCE
- Sec. 535.008. SELECTION OF PROGRAMS OR PROVIDERS
- Sec. 535.009. COPAYMENT SYSTEM
- Sec. 535.010. CHARGE
- Sec. 535.011. CLIENT RESPONSIBILITY FOR PAYMENT
- Sec. 535.012. REVIEW OF CLIENT'S NEEDS
- Sec. 535.013. NOTIFICATION OF CHANGE IN CIRCUMSTANCES
- Sec. 535.014. CRIMINAL PENALTY

[Sections 535.015–535.020 reserved for expansion]

SUBCHAPTER B. REGISTRATION OF BOARDING HOMES

- Sec. 535.021. DEFINITIONS
- Sec. 535.022. APPLICATION TO BOARDING HOMES OPERATED BY DEPARTMENT OR AUTHORITY
- Sec. 535.023. REGISTRATION BY AUTHORITY
- Sec. 535.024. REFERRAL TO UNREGISTERED BOARDING HOME
- Sec. 535.025. ESTABLISHMENT AND APPROVAL OF GUIDELINES
- Sec. 535.026. INSPECTIONS
- Sec. 535.027. SERVICES
- Sec. 535.028. FEES

CHAPTER 535. SUPPORT SERVICES

SUBCHAPTER A. ASSISTANCE FOR PERSONS WITH MENTAL DISABILITIES

Sec. 535.001. DEFINITIONS. In this subchapter:

(1) “Assistance” means a subsidy granted by the department to provide support services to a client.

(2) “Client” means a person with a mental disability who lives independently or a family who receives assistance under this subchapter.

(3) “Family” means a group that consists of a person with a mental disability and that person’s parent, sibling, spouse, child, or legal guardian. The group may include others.

(4) “Legal guardian” means a person appointed by a court of competent jurisdiction to exercise powers over a person with a mental disability.

(5) “Mental illness” has the meaning assigned by Section 571.003.

(6) “Mental retardation” has the meaning assigned by Section 591.003.

(7) "Other support programs" means:

- (A) all forms of local, state, or federal support services other than assistance;
- (B) contract programs; or
- (C) support services provided by public or private funds for persons with mental disabilities or their families.

(8) "Parent" means a natural, foster, surrogate, or adoptive parent.

(9) "Person with a mental disability" means:

- (A) a person with mental illness;
- (B) a person with mental retardation;
- (C) a person with a pervasive developmental disorder; or
- (D) a person younger than four years of age who is eligible for early childhood intervention services.

(10) "Pervasive developmental disorder" means a disorder that begins in childhood and that meets the criteria for a pervasive developmental disorder established in the Diagnostic and Statistical Manual, Edition III-R.

Sec. 535.002. ADOPTION OF RULES AND IMPLEMENTATION OF PROGRAM.

(a) The department shall adopt rules, procedures, guidelines, and standards to implement and administer this subchapter, including:

- (1) procedures and guidelines for determining eligibility standards relating to financial qualifications and the need for services and for determining eligibility criteria for selecting clients;
- (2) standards and procedures for approving qualified programs and support services;
- (3) procedures for conducting a periodic review of clients;
- (4) procedures and guidelines for determining when assistance duplicates other support programs or results in excessive support to a client;
- (5) rules establishing reasonable payment rates for qualified programs and support services under this subchapter; and
- (6) rules establishing a copayment system in accordance with Section 535.009.

(b) If feasible and economical, the department may use local mental health and mental retardation authorities to implement this subchapter. However, the department may not designate those local mental health and mental retardation authorities as the sole providers of services if other providers are available.

Sec. 535.003. ELIGIBILITY. (a) A family, or a person with a mental disability who lives independently, may apply for assistance.

(b) The department's rules must provide that an applicant for assistance is eligible to receive assistance if the applicant resides in this state and meets the department's eligibility criteria for income and need. In addition, a person with a mental disability who lives independently must be 18 years of age or older.

(c) The department shall determine eligibility and the need for support services from the results of current evaluations, program plans, and medical reports. Those documents shall be provided to the department on request. The department, if it considers necessary, may require and shall provide any additional evaluations.

(d) The department shall determine the applicant's needs and the support services for which the applicant is eligible after consulting with the applicant.

(e) In determining eligibility for support services under this subchapter, the department shall determine if the applicant is eligible to receive the services from other support programs and may deny the application if it determines that the applicant is eligible to receive services that are available from another support program. If the department denies the application, the department shall provide to the applicant information on and referral to the appropriate support program.

(f) A local or state agency may not consider assistance received under this subchapter in determining eligibility for another support program unless that consideration is required by federal regulations.

(g) The department shall provide the applicant an opportunity for a hearing to contest the denial of an application.

Sec. 535.004. PROVISION OF ASSISTANCE AND SUPPORT SERVICES. (a) The department shall provide assistance to compensate a client for present and future expenses incurred to maintain in the community a family member with a mental disability or a person with a mental disability who lives independently, including:

(1) the purchase or lease of special equipment or architectural modifications of a home to improve or facilitate the care, treatment, therapy, general living conditions, or access of the person with a mental disability;

(2) medical, surgical, therapeutic, diagnostic, and other health services related to the person's mental disability;

(3) counseling or training programs that assist a family in providing proper care for the family member with a mental disability or assist the person with a mental disability who lives independently, and that provide for the special needs of the family or person;

(4) attendant care, home health aid services, homemaker services, and chore services that provide support with training, routine body functions, dressing, preparation and consumption of food, and ambulation;

(5) respite support for a family that is the client;

(6) transportation services for the person with a mental disability; and

(7) transportation, room, and board costs incurred by the family or the person with a mental disability during evaluation or treatment of the person with a mental disability that have been preapproved by the department.

(b) The department by rule may add services and programs for which the department may provide assistance.

Sec. 535.005. SUPPORT SERVICES FOR CERTAIN CLIENTS. The department may contract with the Texas Department of Human Services to provide support services to clients of the Texas Department of Human Services who are mentally disabled and eligible to receive assistance under this subchapter.

Sec. 535.006. LIMITATION OF DUTY. The department's duty to provide assistance under this subchapter is determined and limited by the funds specifically appropriated to administer this subchapter.

Sec. 535.007. PAYMENT OF ASSISTANCE. (a) The department may grant assistance of not more than \$3,600 a year to a client. The department may distribute the assistance periodically or in a lump sum, according to the client's needs. The commissioner or the commissioner's designee may grant additional amounts on consideration of an individual client's needs.

(b) In addition to the assistance authorized by Subsection (a), the department may award to a client a onetime grant of assistance of not more than \$3,600 for architectural renovation or other capital expenditure to improve or facilitate the care, treatment, therapy, general living conditions, or access of a person with a mental disability. The commissioner or the commissioner's designee may individually grant additional amounts to clients.

(c) The department shall consult with the client to determine the manner of distribution of the assistance. On agreement of the person with a mental disability or the head of the family, as appropriate, the department may distribute the assistance directly to the client or to a qualified program or provider of services serving the client.

Sec. 535.008. SELECTION OF PROGRAMS OR PROVIDERS. (a) Each client may select the client's program or provider of services, except that the client may select only a program or provider that complies with the department's support services standards.

(b) The department shall require each program or provider to comply with the department's support services standards relating to the provision of support services and may disapprove payments to a program or provider that does not comply with the rules.

(c) The department shall assist each client in locating and selecting qualified programs and services.

Sec. 535.009. **COPAYMENT SYSTEM.** The department shall establish a copayment system with each client using a sliding scale for payments determined according to:

- (1) the client's need for assistance to acquire the necessary support services; and
- (2) the client's ability to pay for those services.

Sec. 535.010. **CHARGE.** (a) The department by rule shall establish a reasonable charge for each authorized support service.

(b) The department's liability for the cost of a support service is limited to the amount of the charge established by the department for the service less the amount of any copayment required from the client.

Sec. 535.011. **CLIENT RESPONSIBILITY FOR PAYMENT.** Each client shall pay:

- (1) the client's required copayment; and
- (2) the amount of charges in excess of the amount the department establishes for the service or the amount incurred in excess of the maximum amount of assistance authorized by this subchapter to be provided by the department.

Sec. 535.012. **REVIEW OF CLIENT'S NEEDS.** (a) The department shall regularly review each client's needs as established by the department.

(b) The department shall review each client's needs when there is a change in the circumstances that were considered in determining eligibility or the amount of the required copayment.

Sec. 535.013. **NOTIFICATION OF CHANGE IN CIRCUMSTANCES.** The department shall require each client to notify the department of a change in circumstances that were considered in determining eligibility or the amount of the required copayment.

Sec. 535.014. **CRIMINAL PENALTY.** (a) A person commits an offense if the person, in obtaining or attempting to obtain assistance under this subchapter for himself or another person:

- (1) makes or causes to be made a statement or representation the person knows to be false; or
 - (2) solicits or accepts any assistance for which the person knows he, or the person for whom the solicitation is made, is not eligible.
- (b) An offense under this section is a felony of the third degree.

[Sections 535.015–535.020 reserved for expansion]

SUBCHAPTER B. REGISTRATION OF BOARDING HOMES

Sec. 535.021. **DEFINITIONS.** In this subchapter:

(1) "Boarding home" means an establishment, including a residence, that provides to four or more persons who are not related to the owner or operator of the establishment:

- (A) food and shelter; and
- (B) services that meet a need beyond food and shelter.

(2) "Financial services" means any assistance in managing a resident's personal financial matters that the local mental health or mental retardation authority requires or permits the owner or operator of a registered boarding home to provide to the resident, including:

- (A) cashing checks;
- (B) holding funds for safekeeping in any manner; and

(C) assisting the resident in purchasing goods or services with the resident's personal funds.

(3) "Personal services" means any service, other than shelter, that the local mental health or mental retardation authority requires or permits the owner or operator of a registered boarding home to provide to a resident.

(4) "Registered boarding home" means a boarding home registered by a local mental health or mental retardation authority under this subchapter.

Sec. 535.022. APPLICATION TO BOARDING HOMES OPERATED BY DEPARTMENT OR AUTHORITY. A boarding home operated by the department or a local mental health or mental retardation authority is not required to register under this subchapter but shall meet the standards prescribed by the appropriate authority under this subchapter.

Sec. 535.023. REGISTRATION BY AUTHORITY. (a) Each local mental health or mental retardation authority shall register boarding homes as required by this subchapter.

(b) The local mental health and mental retardation authorities in a service area shall adopt a memorandum of understanding to reduce duplication and clarify responsibilities in registering boarding homes in the service area if the authorities are separate entities.

(c) Each local mental health and mental retardation authority shall involve existing local authorities in the registration and inspection of boarding homes to the extent possible.

Sec. 535.024. REFERRAL TO UNREGISTERED BOARDING HOME. The department may withhold funds from a local mental health or mental retardation authority if the authority refers patients or clients to a boarding home that is not registered by the authority.

Sec. 535.025. ESTABLISHMENT AND APPROVAL OF GUIDELINES. (a) Each local mental health or mental retardation authority shall adopt guidelines relating to the registration of boarding homes.

(b) The guidelines must:

(1) require annual inspections as provided by Section 535.026 of each registered boarding home to which the authority refers a patient or client;

(2) require each registered boarding home to submit to the required annual inspection; and

(3) require each registered boarding home to comply with all applicable local health, sanitation, fire, and safety requirements.

(c) Each local mental health and mental retardation authority shall submit the guidelines to the department for approval. The department shall approve guidelines that meet the criteria prescribed by Subsection (b).

Sec. 535.026. INSPECTIONS. Each local mental health or mental retardation authority shall visit and inspect at least annually each registered boarding home to which the authority refers a patient or client to ensure that the home:

(1) has been inspected;

(2) is in good standing with the local health and safety authorities; and

(3) is providing the personal and financial services that are appropriate for the residents' needs.

Sec. 535.027. SERVICES. (a) Each local mental health or mental retardation authority shall adopt local standards for personal and financial services.

(b) The authority that registers a boarding home shall make the services required by Section 534.053 available to the home's residents who are eligible for mental health and mental retardation services.

(c) The authority shall:

(1) notify the residents and owner or operator of the registered boarding home that the required services are available;

(2) require the home to post the 24-hour emergency crisis number in a conspicuous place in the home; and

(3) allow the boarding home staff and owners to participate in the training provided to the staff of the local authority if the training is applicable to the care of the residents in the home or to the home's operation.

Sec. 535.028. FEES. A local mental health or mental retardation authority may not:

(1) charge a fee for providing training services to a boarding home's staff; or

(2) charge a boarding home a fee for providing services to the home's residents.

[Chapters 536–550 reserved for expansion]

SUBTITLE B. STATE FACILITIES

CHAPTER 551. GENERAL PROVISIONS

**SUBCHAPTER A. GENERAL POWERS AND DUTIES RELATING
TO STATE FACILITIES**

Sec. 551.001. DEFINITIONS

Sec. 551.002. PROHIBITION OF INTEREST

Sec. 551.003. DEPOSIT OF PATIENT OR CLIENT FUNDS

Sec. 551.004. BENEFIT FUND

Sec. 551.005. DISBURSEMENT OF PATIENT FUNDS

Sec. 551.006. FACILITY STANDARDS BY DEPARTMENT OF HEALTH

Sec. 551.007. BUILDING AND IMPROVEMENT PROGRAM

[Sections 551.008–551.020 reserved for expansion]

**SUBCHAPTER B. PROVISIONS APPLICABLE TO FACILITY
SUPERINTENDENT AND BUSINESS MANAGER**

Sec. 551.021. QUALIFICATIONS OF CERTAIN SUPERINTENDENTS

Sec. 551.022. POWERS AND DUTIES OF SUPERINTENDENT

Sec. 551.023. REPORTS FROM SUPERINTENDENT

**Sec. 551.024. SUPERINTENDENT'S DUTY TO ADMIT COMMISSIONER AND BOARD
MEMBERS**

Sec. 551.025. DUTY TO REPORT MISSING PATIENT OR CLIENT

Sec. 551.026. BUSINESS MANAGER

[Sections 551.027–551.040 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES RELATING TO PATIENT CARE

Sec. 551.041. MEDICAL AND DENTAL TREATMENT

Sec. 551.042. OUTPATIENT CLINICS

Sec. 551.043. MENTAL HYGIENE CLINIC SERVICE

Sec. 551.044. OCCUPATIONAL THERAPY PROGRAMS

SUBTITLE B. STATE FACILITIES

CHAPTER 551. GENERAL PROVISIONS

**SUBCHAPTER A. GENERAL POWERS AND DUTIES RELATING
TO STATE FACILITIES**

Sec. 551.001. DEFINITIONS. In this subtitle:

(1) "Board" means the Texas Board of Mental Health and Mental Retardation.

(2) "Commissioner" means the commissioner of mental health and mental retardation.

(3) "Department" means the Texas Department of Mental Health and Mental Retardation.

(4) "Department facility" means a facility under the department's jurisdiction for persons with mental illness or mental retardation.

Sec. 551.002. PROHIBITION OF INTEREST. A member of the board, the superintendent of a department facility, or a person connected with a department facility may not:

(1) sell or have a concern in the sale of merchandise, supplies, or other items to a department facility; or

(2) have an interest in a contract with a department facility.

Sec. 551.003. DEPOSIT OF PATIENT OR CLIENT FUNDS. (a) The superintendent of a department facility is the custodian of the personal funds that belong to a facility patient or client and that are on deposit with the institution.

(b) The superintendent may deposit or invest those funds in:

(1) a bank in this state;

(2) federal bonds or obligations; or

(3) bonds or obligations for which the faith and credit of the United States are pledged.

(c) The superintendent may combine the funds of facility patients or clients only to deposit or invest the funds.

(d) The facility's business manager shall maintain records of the amount of funds on deposit for each facility patient or client.

Sec. 551.004. BENEFIT FUND. (a) The superintendent may deposit the interest or increment accruing from funds deposited or invested under Section 551.003 into a fund to be known as the benefit fund. The superintendent is the trustee of the fund.

(b) The superintendent may spend money from the benefit fund for:

(1) educating or entertaining the patients or clients;

(2) barber or cosmetology services for the patients or clients; and

(3) the actual expense incurred in maintaining the fund.

Sec. 551.005. DISBURSEMENT OF PATIENT FUNDS. Funds in the benefit fund or belonging to a facility patient or client may be disbursed only on the signatures of both the facility's superintendent and business manager.

Sec. 551.006. FACILITY STANDARDS BY DEPARTMENT OF HEALTH. (a) The Texas Department of Health by rule shall prescribe standards for department facilities relating to building safety and the number and quality of staff. The staff standards must provide that adequate staff exist to ensure a continuous plan of adequate medical, psychiatric, nursing, and social work services for patients and clients of a department facility.

(b) The Texas Department of Health shall approve department facilities that meet applicable standards and, when requested, shall certify the approval to the Texas Department of Human Services or the United States Health Care Financing Administration.

Sec. 551.007. BUILDING AND IMPROVEMENT PROGRAM. (a) The department shall design, construct, equip, furnish, and maintain buildings and improvements authorized by law at department facilities.

(b) The department may employ architects and engineers to prepare plans and specifications and to supervise construction of buildings and improvements. The department shall employ professional, technical, and clerical personnel to carry out the design and

construction functions prescribed by this section, subject to the General Appropriations Act and other applicable law.

(c) The board shall adopt rules in accordance with this section and other applicable law relating to awarding contracts for the construction of buildings and improvements. The department shall award contracts for the construction of buildings and improvements to the qualified bidder who makes the lowest and best bid.

(d) The department may not award a construction contract for an amount that exceeds the amount of funds available for the project.

(e) The department shall require each successful bidder to give a bond payable to the state in an amount equal to the amount of the bid and conditioned on the faithful performance of the contract.

(f) The department may reject any or all bids.

(g) The department may waive, suspend, or modify a provision of this section that might conflict with a federal statute, rule, regulation, or administrative procedure if the waiver, suspension, or modification is essential to the receipt of federal funds for a project. If a project is financed entirely from federal funds, a standard required by a federal statute, rule, or regulation controls.

[Sections 551.008–551.020 reserved for expansion]

SUBCHAPTER B. PROVISIONS APPLICABLE TO FACILITY SUPERINTENDENT AND BUSINESS MANAGER

Sec. 551.021. QUALIFICATIONS OF CERTAIN SUPERINTENDENTS. (a) The board by rule shall prescribe the qualifications for appointment as superintendent of the:

- (1) Austin State Hospital;
- (2) Big Spring State Hospital;
- (3) Kerrville State Hospital;
- (4) Rusk State Hospital;
- (5) San Antonio State Hospital;
- (6) Terrell State Hospital;
- (7) Vernon State Hospital; and
- (8) Wichita Falls State Hospital.

(b) The board in prescribing qualifications for superintendent shall consider the need for a superintendent to be a physician licensed to practice medicine in this state who has experience in treating mental disease and has proven administrative experience and ability.

(c) In appointing a superintendent the commissioner shall give preference to a qualified candidate who is a physician licensed to practice medicine in this state, has experience in treating mental disease, and has proven administrative experience and ability. If such a candidate is not available, the commissioner may appoint as superintendent a person who is not a physician but who has proven administrative experience and ability.

(d) Before a nonphysician is appointed as superintendent, the board by rule shall ensure that a physician licensed to practice medicine in this state makes each medical decision, including a decision relating to:

- (1) patient admission;
- (2) the provision of appropriate medical care and treatment;
- (3) the determination of whether a patient has recovered to the extent that the patient is cured and should be discharged; and
- (4) the determination of whether it would be in the patient's best interest to discharge the patient before the period of commitment has expired.

(e) This section does not authorize:

(1) the department or any person, other than a licensed physician acting within the scope of this license, to engage, directly or indirectly, in the practice of medicine; or

(2) the department or any person to regulate, interfere with, or intervene in any manner in the practice of medicine.

Sec. 551.022. POWERS AND DUTIES OF SUPERINTENDENT. (a) The superintendent of a department facility is the administrative head of that facility.

(b) The superintendent has the custody of and responsibility to care for the buildings, grounds, furniture, and other property relating to the facility.

(c) The superintendent shall:

(1) admit and discharge patients and clients;

(2) keep a register of all patients and clients admitted to or discharged from the facility;

(3) supervise repairs and improvements to the facility;

(4) ensure that money entrusted to the superintendent is spent judiciously and economically;

(5) keep an accurate and detailed account of all money received and spent, stating the source of the money and to whom and the purpose for which the money is spent; and

(6) keep a full record of the facility's operations.

(d) The superintendent may:

(1) establish rules to govern the facility that the superintendent considers will best promote the patients' and clients' interest and welfare;

(2) appoint subordinate officers, teachers, attendants, and other employees and set their salaries, in the absence of other law; and

(3) remove an officer, teacher, or employee for good cause and with the board's consent.

Sec. 551.023. REPORTS FROM SUPERINTENDENT. (a) The superintendent of each department facility shall file with the governor and the board a full report showing the receipt and disposition of all money and choses in action. The report must be sworn to and filed on January 1 and July 1 of each year.

(b) The report must also contain:

(1) a detailed description of the department facility operations during the reporting period;

(2) each recommendation the superintendent considers important to the department facility;

(3) the number of department facility employees and the salary of each;

(4) the number of patients or clients admitted or discharged and the number in the department facility;

(5) the patients' or clients' general condition; and

(6) an estimate of the appropriations needed for maintenance.

Sec. 551.024. SUPERINTENDENT'S DUTY TO ADMIT COMMISSIONER AND BOARD MEMBERS. (a) The superintendent shall admit into every part of the department facility the commissioner and members of the board.

(b) The superintendent shall on request show any book, paper, or account relating to the department facility's business, management, discipline, or government to the commissioner or board member.

(c) The superintendent shall give to the commissioner or a board member any requested copy, abstract, or report.

Sec. 551.025. DUTY TO REPORT MISSING PATIENT OR CLIENT. If a person receiving inpatient mental retardation services or court-ordered inpatient mental health services in a department facility leaves the facility without notifying the facility or without the facility's consent, the facility superintendent shall immediately report the

person as a missing person to an appropriate law enforcement agency in the area in which the facility is located.

Sec. 551.026. BUSINESS MANAGER. (a) The business manager is the chief disbursing officer of the department facility.

(b) The business manager is directly responsible to the superintendent.

[Sections 551.027–551.040 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES RELATING TO PATIENT CARE

Sec. 551.041. MEDICAL AND DENTAL TREATMENT. (a) The department shall provide or perform recognized medical and dental treatment or services to a person admitted or committed to the department's care. The department may perform this duty through an authorized agent.

(b) The department may contract for the support, maintenance, care, or medical or dental treatment or service with a municipal, county, or state hospital, a private physician, a licensed nursing home or hospital, or a hospital district. The authority to contract provided by this subsection is in addition to other contractual authority granted to the department. A contract entered into under this subsection may not assign a lien accruing to this state.

(c) If the department requests consent to perform medical or dental treatment or services from a person or the guardian of the person whose consent is considered necessary and a reply is not obtained immediately, or if there is no guardian or responsible relative of the person to whom a request can be made, the superintendent of a department facility shall order:

(1) medical treatment or services for the person on the advice and consent of three physicians licensed by the Texas State Board of Medical Examiners, at least one of whom is primarily engaged in the private practice of medicine; or

(2) dental treatment or services for the person on the advice and consent of a dentist licensed by the State Board of Dental Examiners and of two physicians licensed by the Texas State Board of Medical Examiners, at least one of whom is primarily engaged in the private practice of medicine.

(d) This section does not authorize the performance of an operation involving sexual sterilization or a frontal lobotomy.

Sec. 551.042. OUTPATIENT CLINICS. (a) If funds are available, the department may establish in locations the department considers necessary outpatient clinics to treat persons with mental illness.

(b) As necessary to establish and operate the clinics, the department may:

(1) acquire facilities;

(2) hire personnel;

(3) adopt rules; and

(4) contract with persons, corporations, and local, state, and federal agencies.

Sec. 551.043. MENTAL HYGIENE CLINIC SERVICE. (a) The department may establish a mental hygiene clinic service through its agents and facilities.

(b) The clinic service shall cooperate with the Central Education Agency and local boards of education in studying the mental and physical health of children:

(1) with serious retardation in school progress or in mental development; or

(2) who have personality development problems.

Sec. 551.044. OCCUPATIONAL THERAPY PROGRAMS. (a) The department may provide equipment, materials, and merchandise for occupational therapy programs at department facilities.

(b) The superintendent of a department facility may, in accordance with department rules, contract for the provision of equipment, materials, and merchandise for occupation-

al therapy programs. If the contractor retains the finished or semi-finished product, the contract shall provide for a fair and reasonable rental payment to the department by the contractor for the use of facility premises or equipment. The rental payment is determined by the amount of time the facility premises or equipment is used in making the products.

(c) The finished products made in an occupational therapy program may be sold and the proceeds placed in the patients' benefit fund, the patients' trust fund, or a revolving fund for use by the patients. A patient may keep the finished product if the patient purchases the material for the product from the state.

(d) The department may accept donations of money or materials for use in occupational therapy programs and may use a donation in the manner requested by the donor if not contrary to board policy.

CHAPTER 552. STATE HOSPITALS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 552.001. HOSPITAL DISTRICTS

[Sections 552.002–552.010 reserved for expansion]

SUBCHAPTER B. INDIGENT AND NONINDIGENT PATIENTS

Sec. 552.011. DEFINITION

Sec. 552.012. CLASSIFICATION AND DEFINITION OF PATIENTS

Sec. 552.013. SUPPORT OF INDIGENT AND NONINDIGENT PATIENTS

Sec. 552.014. CHILD SUPPORT PAYMENTS FOR BENEFIT OF PATIENT

Sec. 552.015. INVESTIGATION TO DETERMINE MEANS OF SUPPORT

Sec. 552.016. FEES

Sec. 552.017. SLIDING FEE SCHEDULE

Sec. 552.018. TRUST PRINCIPALS

Sec. 552.019. FILING OF CLAIMS

[Sections 552.020–552.030 reserved for expansion]

SUBCHAPTER C. SAN ANTONIO STATE HOSPITAL

Sec. 552.031. SECURITY AT SAN ANTONIO STATE HOSPITAL

[Sections 552.032–552.040 reserved for expansion]

SUBCHAPTER D. AUSTIN STATE HOSPITAL

Sec. 552.041. AUSTIN STATE HOSPITAL ANNEX

CHAPTER 552. STATE HOSPITALS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 552.001. HOSPITAL DISTRICTS. (a) The department shall divide the state into hospital districts.

(b) The department may change the districts.

(c) The department shall designate the state hospitals to which persons with mental illness from each district shall be admitted.

[Sections 552.002–552.010 reserved for expansion]

SUBCHAPTER B. INDIGENT AND NONINDIGENT PATIENTS

Sec. 552.011. DEFINITION. In this subchapter, "patient" means a person admitted to a state hospital under the management and control of the department.

Sec. 552.012. CLASSIFICATION AND DEFINITION OF PATIENTS. (a) A patient is classified as either indigent or nonindigent.

(b) An indigent patient is a patient who:

- (1) possesses no property;
- (2) has no person legally responsible for the patient's support; and
- (3) is unable to reimburse the state for the costs of the patient's support, maintenance, and treatment.

(c) A nonindigent patient is a patient who:

- (1) possesses property from which the state may be reimbursed for the costs of the patient's support, maintenance, and treatment; or
- (2) has a person legally responsible for the patient's support.

Sec. 552.013. SUPPORT OF INDIGENT AND NONINDIGENT PATIENTS. (a) A person may not be denied services under this subtitle because of an inability to pay for the services.

(b) The state shall support, maintain, and treat indigent and nonindigent patients at the expense of the state.

(c) The state is entitled to reimbursement for the support, maintenance, and treatment of a nonindigent patient.

(d) A patient who does not own a sufficient estate shall be maintained at the expense:

- (1) of the patient's spouse, if able to do so; or
- (2) if the patient is younger than 18 years of age, of the patient's father or mother, if able to do so.

Sec. 552.014. CHILD SUPPORT PAYMENTS FOR BENEFIT OF PATIENT. (a) Child support payments for the benefit of a patient paid or owed by a parent under court order are considered the property and estate of the patient, and the state may be reimbursed for the costs of a patient's support, maintenance, and treatment from those amounts.

(b) The state shall credit the amount of child support a parent actually pays for a patient against charges for which the parent is liable, based on ability to pay.

(c) A parent who receives child support payments for a patient is liable for the charges based on the amount of child support payments actually received in addition to the liability of that parent based on ability to pay.

(d) The department may file a motion to modify a court order that establishes a child support obligation for a patient to require payment of the child support directly to the state hospital or facility in which the patient resides for the patient's support, maintenance, and treatment if:

- (1) the patient's parent fails to pay child support as required by the order; or
- (2) the patient's parent who receives child support fails to pay charges based on the amount of child support payments received.

(e) In addition to modification of an order under Subsection (d), the court may order all past due child support for the benefit of a patient paid directly to the patient's state hospital or facility to the extent that the state is entitled to reimbursement of the patient's charges from the child support obligation.

Sec. 552.015. INVESTIGATION TO DETERMINE MEANS OF SUPPORT. (a) The department may demand and conduct an investigation in a county court to determine whether a patient possesses or is entitled to property or whether a person other than the patient is liable for the payment of the costs of the patient's support, maintenance, and treatment.

(b) The department may have citation issued and witnesses summoned to be heard on the investigation.

Sec. 552.016. FEES. (a) Except as provided by this section, the department may not charge a fee that exceeds the cost to the state to support, maintain, and treat a patient.

(b) The department may use the projected cost of providing inpatient services to establish the maximum fee that may be charged to a payer.

(c) The department may establish the maximum fee according to one or a combination of the following:

- (1) a statewide per capita;
- (2) an individual facility per capita; or
- (3) the type of service provided.

(d) Notwithstanding Subsection (b), the department may establish a fee in excess of the department's projected cost of providing inpatient services that may be charged to a payer:

- (1) who is not an individual; and
- (2) whose method of determining the rate of reimbursement to a provider results in the excess.

Sec. 552.017. SLIDING FEE SCHEDULE. (a) The department by rule shall establish a sliding fee schedule for the payment by the patient's parents of the state's total costs for the support, maintenance, and treatment of a patient younger than 18 years of age.

(b) The department shall set the fee according to the parents' net taxable income and ability to pay.

(c) The parents may elect to have their net taxable income determined by their current financial statement or most recent federal income tax return.

(d) In determining the portion of the costs of the patient's support, maintenance, and treatment that the parents are required to pay, the department shall adjust, when appropriate, the payment required under the fee schedule to allow for consideration of other factors affecting the ability of the parents to pay.

Sec. 552.018. TRUST PRINCIPALS. (a) If a patient is the beneficiary of a trust that has an aggregate principal of \$50,000 or less, the corpus or income of the trust is not considered to be the property of the patient or the patient's estate and is not liable for the patient's support. If the aggregate principal of the trust exceeds \$50,000, only the portion of the corpus of the trust that exceeds that amount and the income attributable to that portion are considered to be the property of the patient or the patient's estate and are liable for the patient's support.

(b) To qualify for the exemption provided by Subsection (a), the trust must be created by a written instrument, and a copy of the trust instrument must be provided to the department.

(c) A trustee of the trust shall, on the department's request, provide to the department a financial statement that shows the value of the trust estate.

(d) The department may petition a district court to order the trustee to provide a financial statement if the trustee does not provide the statement before the 31st day after the date on which the department makes the request. The court shall hold a hearing on the department's petition not later than the 45th day after the date on which the petition is filed. The court shall order the trustee to provide to the department a financial statement if the court finds that the trustee has failed to provide the statement.

(e) For the purposes of this section, the following are not considered to be trusts and are not entitled to the exemption provided by this section:

- (1) a guardianship established under the Texas Probate Code;
- (2) a trust established under Chapter 142, Property Code;
- (3) a facility custodial account established under Section 551.003;

(4) the provisions of a divorce decree or other court order relating to child support obligations;

(5) an administration of a decedent's estate; or

(6) an arrangement in which funds are held in the registry or by the clerk of a court.

Sec. 552.019. FILING OF CLAIMS. (a) A county or district attorney shall, on the written request of the department, represent the state in filing a claim in probate court or a petition in a court of competent jurisdiction:

(1) to require the person responsible for a patient to appear in court and show cause why the state should not have judgment against the person for the costs of the patient's support, maintenance, and treatment; or

(2) if the liability arises under Subchapter D, Chapter 593, to require a person responsible for a resident to appear in court and show cause why the state should not have judgment against the person for the resident's support and maintenance in a residential care facility operated by the department.

(b) On a sufficient showing, the court may enter judgment against:

(1) the person responsible for the patient for the costs of the patient's support, maintenance, and treatment; or

(2) the person responsible for the resident for the costs of the resident's support and maintenance.

(c) Sufficient evidence to authorize the court to enter judgment is:

(1) a verified account, sworn to by the superintendent or director of the hospital in which the patient is being treated, or has been treated, as to the amount due; or

(2) a verified account, sworn to by the superintendent or director of the residential care facility in which the person with mental retardation resided or has resided, as to the amount due.

(d) The judgment may be enforced as in other cases.

(e) The county or district attorney representing the state is entitled to a commission of 10 percent of the amount collected.

(f) The attorney general shall represent the state if the county and district attorney refuse or are unable to act on the department's request.

(g) In this section:

(1) "Person responsible for a patient" means the guardian of a patient, a person liable for the support of the patient, or both.

(2) "Person responsible for a resident" means the resident, a person liable for the support of the resident, or both.

(3) "Resident" means a person admitted to a residential care facility operated by the department for persons with mental retardation.

[Sections 552.020–552.030 reserved for expansion]

SUBCHAPTER C. SAN ANTONIO STATE HOSPITAL

Sec. 552.031. SECURITY AT SAN ANTONIO STATE HOSPITAL. (a) The Texas Department of Mental Health and Mental Retardation shall establish and enforce security measures at the San Antonio State Hospital to ensure that:

(1) the hospital's patients do not leave without authorization; and

(2) the patients who are absent without authorization are returned to the hospital as quickly as practicable.

(b) The department shall include provisions in the security measures for:

(1) a daily check to determine if any patients are absent; and

(2) immediate reporting to local law enforcement officials of the identity of a patient who is absent without authorization.

[Sections 552.032–552.040 reserved for expansion]

SUBCHAPTER D. AUSTIN STATE HOSPITAL

Sec. 552.041. AUSTIN STATE HOSPITAL ANNEX. (a) The Austin State Hospital Annex is a part of the Austin State Hospital.

(b) The Austin State Hospital Annex shall provide support, maintenance, and treatment to persons with mental illness who are admitted or committed to the annex.

CHAPTER 553. STATE SCHOOLS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 553.001. EPILEPSY

[Sections 553.002–553.020 reserved for expansion]

SUBCHAPTER B. STATE SCHOOLS

Sec. 553.021. LUFKIN STATE SCHOOL

Sec. 553.022. SAN ANTONIO STATE SCHOOL

CHAPTER 553. STATE SCHOOLS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 553.001. EPILEPSY. A person may not be denied admission to a state institution or school because the person suffers from epilepsy.

[Sections 553.002–553.020 reserved for expansion]

SUBCHAPTER B. STATE SCHOOLS

Sec. 553.021. LUFKIN STATE SCHOOL. The Texas Department of Mental Health and Mental Retardation may acquire by eminent domain or purchase land adjacent to the original area of the Lufkin State School for the purpose of enlarging the school.

Sec. 553.022. SAN ANTONIO STATE SCHOOL. (a) The San Antonio State School is for the education, care, and treatment of persons with mental retardation.

(b) The Texas Department of Mental Health and Mental Retardation may enter into agreements with the Texas Department of Health for use of the excess facilities of the San Antonio Chest Hospital in the operation of the school.

CHAPTER 554. STATE CENTERS AND HOMES

SUBCHAPTER A. WACO CENTER FOR YOUTH

Sec. 554.001. ADMISSION OF CERTAIN JUVENILES

Sec. 554.002. SERVICES

[Sections 554.003–554.010 reserved for expansion]

SUBCHAPTER B. LAREDO STATE CENTER

Sec. 554.011. PURPOSE

Sec. 554.012. ACQUISITION OF LAND

Sec. 554.013. CONSTRUCTION OF BUILDINGS

[Sections 554.014–554.020 reserved for expansion]

SUBCHAPTER C. LEANDER REHABILITATION CENTER

Sec. 554.021. CONTRACT FOR USE OF LEANDER REHABILITATION CENTER

[Sections 554.022–554.030 reserved for expansion]

SUBCHAPTER D. DALLAS NEUROPSYCHIATRIC INSTITUTE

Sec. 554.031. DEFINITIONS

Sec. 554.032. ESTABLISHMENT; DEPARTMENT POWERS

Sec. 554.033. LOCATION AND ACQUISITION OF LAND

Sec. 554.034. CONSTRUCTION OF BUILDINGS

Sec. 554.035. STAFF

CHAPTER 554. STATE CENTERS AND HOMES

SUBCHAPTER A. WACO CENTER FOR YOUTH

Sec. 554.001. ADMISSION OF CERTAIN JUVENILES. (a) The department shall use the Waco Center for Youth as a residential treatment facility for emotionally disturbed juveniles who:

(1) have been committed under Subtitle C to a facility of the department; or

(2) are under the managing conservatorship of the Texas Department of Human Services and have been committed under Subtitle C to the Waco Center for Youth.

(b) An emotionally disturbed juvenile who has been found to have engaged in delinquent conduct or conduct indicating a need for supervision under Title 3, Family Code, may not be admitted to the Waco Center for Youth.

Sec. 554.002. SERVICES. (a) The department shall provide without charge appropriate education services for all clients residing at the Waco Center for Youth.

(b) The department shall pay for those services from funds appropriated to the center for that purpose.

(c) A client of the center who is not a resident of the Waco Independent School District may receive education services from the Waco Independent School District only with the prior approval of the superintendent of the district.

[Sections 554.003–554.010 reserved for expansion]

SUBCHAPTER B. LAREDO STATE CENTER

Sec. 554.011. PURPOSE. The Laredo State Center shall provide mental retardation and mental health services to the people of this state.

Sec. 554.012. ACQUISITION OF LAND. (a) The Texas Board of Mental Health and Mental Retardation may acquire land by purchase or gift for the Laredo State Center in the Webb County, Texas, area.

(b) After the title to any land acquired for the Laredo State Center has been approved by the attorney general, the board shall take the title in the name of this state for the use and benefit of the center.

Sec. 554.013. CONSTRUCTION OF BUILDINGS. (a) The Texas Board of Mental Health and Mental Retardation may build suitable permanent buildings to provide mental retardation and mental health services at the Laredo State Center.

(b) When the land and necessary funds are available, plans and specifications for the buildings may, under procedures adopted by the board, be prepared and contracts for the construction of the buildings may be awarded.

[Sections 554.014–554.020 reserved for expansion]

SUBCHAPTER C. LEANDER REHABILITATION CENTER

Sec. 554.021. **CONTRACT FOR USE OF LEANDER REHABILITATION CENTER.** The department may contract with community mental health and mental retardation centers and with persons and private organizations and foundations concerned with mental health and mental retardation for the use of the Leander Rehabilitation Center.

[Sections 554.022–554.030 reserved for expansion]

SUBCHAPTER D. DALLAS NEUROPSYCHIATRIC INSTITUTE

Sec. 554.031. **DEFINITIONS.** In this subchapter:

- (1) "Board of regents" means the board of regents of The University of Texas.
- (2) "Institute" means the Dallas Neuropsychiatric Institute.
- (3) "Medical school" means The University of Texas Southwestern Medical School in Dallas.

Sec. 554.032. **ESTABLISHMENT; DEPARTMENT POWERS.** (a) The department may establish, construct, maintain, and operate the Dallas Neuropsychiatric Institute for treatment, teaching, and research.

(b) The department may execute any contract relating to establishing, constructing, or maintaining the institute and adopt regulations relating to the institute as if the action were taken by the department on another of the department's institutions. The department may staff the institute in conjunction with the medical school.

Sec. 554.033. **LOCATION AND ACQUISITION OF LAND.** (a) The institute shall be located on land adjacent to the medical school.

(b) The department may acquire land by purchase or gift for the institute.

(c) The board of regents may convey a tract of land not to exceed 10 acres on the campus of the medical school in the William B. Coats Survey, Abstract No. 236, Dallas County, to the department as a construction site for the institute if the medical school is entitled to use the institute as a full-time teaching facility.

(d) A contract between the board of regents and the department to operate a full-time teaching facility that is integrated with the medical program of the medical school must be negotiated and executed before the deed to the land described in Subsection (c) of this section is executed. The contract may not obligate any University of Texas funds for the construction, maintenance, or operation of the institute.

(e) After the title to any land acquired for the institute has been approved by the attorney general, the department shall take the title in the name of this state for the use and benefit of the institute.

Sec. 554.034. **CONSTRUCTION OF BUILDINGS.** The department, in conjunction with representatives of the medical school, shall prepare plans and specifications for buildings needed for the institute. The department may contract or accept gifts or grants to construct and equip the facilities of the institute.

Sec. 554.035. **STAFF.** The department shall use the staff, students, and research made available by the medical school. The department may contract with a public or private agency for research or service.

[Chapters 555–570 reserved for expansion]

SUBTITLE C. TEXAS MENTAL HEALTH CODE

CHAPTER 571. GENERAL PROVISIONS

- Sec. 571.001. SHORT TITLE**
- Sec. 571.002. PURPOSE**
- Sec. 571.003. DEFINITIONS**
- Sec. 571.004. LEAST RESTRICTIVE APPROPRIATE SETTING**
- Sec. 571.005. TEXAS MENTAL HEALTH CODE INFORMATION PROGRAM**
- Sec. 571.006. DEPARTMENT POWERS**
- Sec. 571.007. DELEGATION OF POWERS AND DUTIES**
- Sec. 571.008. RETURN OF COMMITTED PATIENT TO STATE OF RESIDENCE**
- Sec. 571.009. EFFECT OF CERTAIN CONDITIONS ON ADMISSION OR COMMITMENT**
- Sec. 571.010. AGENT FOR SERVICE OF PROCESS**
- Sec. 571.011. APPLICATION TO PERSONS CHARGED WITH CRIME**
- Sec. 571.012. COURT HOURS**
- Sec. 571.013. METHOD OF GIVING NOTICE**
- Sec. 571.014. FILING REQUIREMENTS**
- Sec. 571.015. INSPECTION OF COURT RECORDS**
- Sec. 571.016. REPRESENTATION OF STATE**
- Sec. 571.017. COMPENSATION OF COURT-APPOINTED PERSONNEL**
- Sec. 571.018. COSTS**
- Sec. 571.019. LIMITATION OF LIABILITY**
- Sec. 571.020. CRIMINAL PENALTIES**
- Sec. 571.021. ENFORCEMENT OFFICERS**

SUBTITLE C. TEXAS MENTAL HEALTH CODE

CHAPTER 571. GENERAL PROVISIONS

- Sec. 571.001. SHORT TITLE.** This subtitle may be cited as the Texas Mental Health Code.
- Sec. 571.002. PURPOSE.** The purpose of this subtitle is to provide to each person having severe mental illness access to humane care and treatment by:
 - (1) facilitating treatment in an appropriate setting;
 - (2) enabling the person to obtain necessary evaluation, care, treatment, and rehabilitation with the least possible trouble, expense, and embarrassment to the person and the person's family;
 - (3) eliminating, if requested, the traumatic effect on the person's mental health of public trial and criminal-like procedures;
 - (4) protecting the person's right to a judicial determination of the person's need for involuntary treatment;
 - (5) defining the criteria the state must meet to order involuntary care and treatment;
 - (6) establishing the procedures to obtain facts, carry out examinations, and make prompt and fair decisions;
 - (7) safeguarding the person's legal rights so as to advance and not impede the therapeutic and protective purposes of involuntary care; and
 - (8) safeguarding the rights of the person who voluntarily requests inpatient care.
- Sec. 571.003. DEFINITIONS.** In this subtitle:
 - (1) "Board" means the Texas Board of Mental Health and Mental Retardation.
 - (2) "Commissioner" means the commissioner of mental health and mental retardation.
 - (3) "Commitment order" means a court order for involuntary inpatient mental health services under this subtitle.

(4) "Community center" means a center established under Subchapter A, Chapter 534 that provides mental health services.

(5) "Department" means the Texas Department of Mental Health and Mental Retardation.

(6) "Facility administrator" means the individual in charge of a mental health facility.

(7) "General hospital" means a hospital operated primarily to diagnose, care for, and treat physically ill persons.

(8) "Hospital administrator" means the individual in charge of a hospital.

(9) "Inpatient mental health facility" means a mental health facility that can provide 24-hour residential and psychiatric services and that is:

(A) a facility operated by the department;

(B) a private mental hospital licensed by the department;

(C) a community center;

(D) a facility operated by a community center or other entity the department designates to provide mental health services;

(E) an identifiable part of a general hospital in which diagnosis, treatment, and care for persons with mental illness is provided and that is licensed by the department or the Texas Department of Health; or

(F) a hospital operated by a federal agency.

(10) "Legal holiday" includes a holiday listed in Article 4591, Revised Statutes, and an officially designated county holiday applicable to a court in which proceedings under this subtitle are held.

(11) "Mental health authority" means an agency designated by the commissioner to direct, operate, facilitate, or coordinate services for persons with mental illness in a service area.

(12) "Mental health facility" means:

(A) an inpatient or outpatient mental health facility operated by the department, a federal agency, a political subdivision, or any person;

(B) a community center or a facility operated by a community center; or

(C) that identifiable part of a general hospital in which diagnosis, treatment, and care for persons with mental illness is provided.

(13) "Mental hospital" means a hospital:

(A) operated primarily to provide inpatient care and treatment for persons with mental illness; or

(B) operated by a federal agency that is equipped to provide inpatient care and treatment for persons with mental illness.

(14) "Mental illness" means an illness, disease, or condition, other than epilepsy, senility, alcoholism, or mental deficiency, that:

(A) substantially impairs a person's thought, perception of reality, emotional process, or judgment; or

(B) grossly impairs behavior as demonstrated by recent disturbed behavior.

(15) "Non-physician mental health professional" means:

(A) a psychologist licensed to practice in this state and designated as a health-service provider;

(B) a registered nurse with a master's or doctoral degree in psychiatric nursing; or

(C) a certified social worker with a master's or doctoral degree and advanced clinical practitioner recognition.

(16) "Patient" means an individual who is receiving voluntary or involuntary mental health services under this subtitle.

(17) "Person" includes an individual, firm, partnership, joint-stock company, joint venture, association, and corporation.

(18) "Physician" means a person licensed to practice medicine in this state or a person employed by a federal agency who has a license to practice medicine in any state.

(19) "Political subdivision" includes a county, municipality, or hospital district in this state but does not include a department, board, or agency of the state that has statewide authority and responsibility.

(20) "Private mental hospital" means a mental hospital operated by a person or political subdivision.

(21) "State mental hospital" means a mental hospital operated by the department.

(22) "Single portal authority" means a mental health authority designated as a single portal authority by the department.

Sec. 571.004. **LEAST RESTRICTIVE APPROPRIATE SETTING.** The least restrictive appropriate setting for the treatment of a patient is the treatment setting that:

(1) is available;

(2) provides the patient with the greatest probability of improvement or cure; and

(3) is no more restrictive of the patient's physical or social liberties than is necessary to provide the patient with the most effective treatment and to protect adequately against any danger the patient poses to himself or others.

Sec. 571.005. **TEXAS MENTAL HEALTH CODE INFORMATION PROGRAM.** (a) The department shall hold seminars as necessary to increase understanding of and properly implement revisions to this subtitle.

(b) The department may arrange for community centers, other state agencies, and other public and private organizations or programs to prepare instructional materials and conduct the seminars.

(c) The department may solicit, receive, and expend funds it receives from public or private organizations to fund the seminars.

Sec. 571.006. **DEPARTMENT POWERS.** The department may:

(1) adopt rules as necessary for the proper and efficient treatment of persons with mental illness;

(2) prescribe the form and content of applications, certificates, records, and reports provided for under this subtitle;

(3) require reports from a facility administrator relating to the admission, examination, diagnosis, release, or discharge of any patient;

(4) regularly visit each mental health facility to review the commitment procedure for each new patient admitted after the last visit; and

(5) visit a mental health facility to investigate a complaint made by a patient or by a person on behalf of a patient.

Sec. 571.007. **DELEGATION OF POWERS AND DUTIES.** (a) Except as otherwise expressly provided by this subtitle, an authorized, qualified department employee may exercise a power granted to or perform a duty imposed on the department.

(b) Except as otherwise expressly provided by this subtitle, an authorized, qualified person designated by a facility administrator may exercise a power granted to or perform a duty imposed on the facility administrator.

(c) The delegation of a duty under this section does not relieve the department or a facility administrator from responsibility.

Sec. 571.008. **RETURN OF COMMITTED PATIENT TO STATE OF RESIDENCE.** (a) The department may return a nonresident patient committed to a department mental health facility to the proper agency of the patient's state of residence.

(b) The department may permit the return of a resident of this state who is committed to a mental health facility in another state.

(c) The department may enter into reciprocal agreements with the proper agencies of other states to facilitate the return of persons committed to mental health facilities in this state or another state to the states of their residence.

(d) A department facility administrator may detain for not more than 96 hours pending a court order in a commitment proceeding in this state a patient returned to this state from another state where the person was committed.

(e) The state returning a committed patient to another state shall bear the expenses of returning the patient.

Sec. 571.009. EFFECT OF CERTAIN CONDITIONS ON ADMISSION OR COMMITMENT. A person with mental illness may not be denied admission or commitment to a mental health facility because the person also suffers from epilepsy, senility, alcoholism, or mental deficiency.

Sec. 571.010. AGENT FOR SERVICE OF PROCESS. (a) The facility administrator or the superintendent, supervisor, or manager of an inpatient mental health facility is the agent for service of process on a patient confined in the facility.

(b) The person receiving process shall sign a certificate with the person's name and title that states that the person is aware of the provisions of this subtitle. The certificate shall be attached to the citation and returned by the serving officer.

(c) The person receiving process, not later than the third day after its receipt, shall forward it by registered mail to the patient's legal guardian or personally deliver it to the patient, whichever appears to be in the patient's best interest.

Sec. 571.011. APPLICATION TO PERSONS CHARGED WITH CRIME. (a) A child alleged to have engaged in delinquent conduct or conduct indicating a need for supervision under Title 3, Family Code, is not considered under this subtitle to be a person charged with a criminal offense.

(b) The provisions in this subtitle relating to the discharge, furlough, or transfer of a patient do not apply to a person charged with a criminal offense who is admitted to a mental health facility under Section 5, Article 46.02, Code of Criminal Procedure.

Sec. 571.012. COURT HOURS. The probate court or court having probate jurisdiction shall be open at all times for proceedings under this subtitle.

Sec. 571.013. METHOD OF GIVING NOTICE. Except as otherwise provided by this subtitle, notice required under this subtitle may be given by delivering a copy of the notice or document in person or in another manner directed by the court that is reasonably calculated to give actual notice.

Sec. 571.014. FILING REQUIREMENTS. (a) Each application, petition, certificate, or other paper permitted or required to be filed in a probate court or court having probate jurisdiction under this subtitle must be filed with the county clerk of the proper county.

(b) The county clerk shall file each paper after endorsing on it:

- (1) the date on which the paper is filed;
- (2) the docket number; and
- (3) the clerk's official signature.

(c) A person may initially file a paper with the county clerk by the use of reproduced, photocopied, or electronically transmitted paper if the person files the original signed copies of the paper with the clerk not later than the third working day after the date on which the initial filing is made.

Sec. 571.015. INSPECTION OF COURT RECORDS. (a) Each paper in a docket for mental health proceedings in the county clerk's office, including the docket book, indexes, and judgment books, is a public record of a private nature that may be used, inspected, or copied only under a written order issued by the county judge, a judge of a court that has probate jurisdiction, or a judge of a district court having jurisdiction in the county in which the docket is located.

(b) A judge may not issue an order under Subsection (a) unless the judge enters a finding that:

- (1) the use, inspection, or copying is justified and in the public interest; or
- (2) the paper is to be released to the person to whom it relates or to a person designated in a written release signed by the person to whom the paper relates.
- (c) In addition to the finding required by Subsection (b), if a law relating to confidentiality of mental health information or physician-patient privilege applies, the judge must find that the reasons for the use, inspection, or copying fall within the applicable statutory exemptions.
- (d) The papers shall be released to an attorney representing the proposed patient in a proceeding held under this subtitle.
- (e) This section does not affect access of law enforcement personnel to necessary information in execution of a writ or warrant.

Sec. 571.016. REPRESENTATION OF STATE. In a hearing on court-ordered mental health services held under this subtitle:

- (1) the county attorney shall represent the state; or
- (2) if the county has no county attorney, the district attorney shall represent the state.

Sec. 571.017. COMPENSATION OF COURT-APPOINTED PERSONNEL. (a) The court shall order the payment of reasonable compensation to attorneys, physicians, language interpreters, sign interpreters, and masters appointed under this subtitle.

- (b) The compensation paid shall be taxed as costs in the case.

Sec. 571.018. COSTS. (a) A county shall pay the costs for a hearing or proceeding under this subtitle if the county:

- (1) initiates emergency detention procedures under Subchapter A or B, Chapter 573;
- (2) has an application for court-ordered mental health services transferred to it under Section 574.008(b); or

- (3) accepts an application for court-ordered mental health services and issues an order for protective custody or for temporary mental health services.

(b) Costs under this section include:

- (1) attorney's fees;
- (2) physician examination fees;
- (3) compensation for court-appointed personnel listed under Section 571.017; and
- (4) expenses of transportation to a department mental health facility or to a federal agency.

(c) A county is entitled to reimbursement for costs actually paid by the county from:

- (1) the patient; or
- (2) a person or estate liable for the patient's support in a department mental health facility.

(d) The state shall pay the cost of transporting a discharged or furloughed patient to the patient's home or of returning a patient absent without authority unless the patient or someone responsible for the patient is able to pay the costs.

(e) A proposed patient's county of residence shall pay the court-approved expenses incurred under Section 574.010 if ordered by the court under that section.

(f) A judge who holds hearings at locations other than the county courthouse is entitled to additional compensation as provided by Sections 574.031(h) and (i).

(g) The state or a county may not pay any costs for a patient committed to a private mental hospital.

Sec. 571.019. LIMITATION OF LIABILITY. (a) A person who participates in the examination, certification, apprehension, custody, transportation, detention, treatment, or discharge of any person or in the performance of any other act required or authorized by this subtitle and who acts in good faith, reasonably, and without negligence is not criminally or civilly liable for that action.

(b) A physician performing a medical examination and providing information to the court in a court proceeding held under this subtitle or providing information to a peace officer to demonstrate the necessity to apprehend a person under Chapter 573 is considered an officer of the court and is not liable for the examination or testimony when acting without malice.

(c) A physician or inpatient mental health facility that discharges a voluntary patient is not liable for the discharge if:

- (1) a written request for the patient's release was filed and not withdrawn; and
- (2) the person who filed the written request for discharge is notified that the person assumes all responsibility for the patient on discharge.

Sec. 571.020. CRIMINAL PENALTIES. (a) A person commits an offense if the person intentionally causes, conspires with another to cause, or assists another to cause the unwarranted commitment of a person to a mental health facility. An offense under this subsection is a misdemeanor punishable by a fine of not more than \$5,000, confinement in the county jail for not more than two years, or both.

(b) A person commits an offense if the person knowingly violates a provision of this subtitle. An offense under this subsection is a misdemeanor punishable by a fine of not more than \$5,000, confinement in the county jail for not more than one year, or both.

Sec. 571.021. ENFORCEMENT OFFICERS. The state attorney general and the district and county attorneys within their respective jurisdictions shall prosecute violations of this subtitle.

CHAPTER 572. VOLUNTARY INPATIENT MENTAL HEALTH SERVICES

Sec. 572.001. REQUEST FOR ADMISSION

Sec. 572.002. ADMISSION

Sec. 572.003. RIGHTS OF PATIENTS

Sec. 572.004. DISCHARGE OR RELEASE

Sec. 572.005. APPLICATION FOR COURT-ORDERED TREATMENT

CHAPTER 572. VOLUNTARY INPATIENT MENTAL HEALTH SERVICES

Sec. 572.001. REQUEST FOR ADMISSION. (a) A person 16 years of age or older may request admission to an inpatient mental health facility by filing a request with the administrator of the facility to which admission is requested. The parent, managing conservator, or guardian of a person younger than 16 years of age may request the admission of the person to an inpatient mental health facility by filing a request with the administrator of the facility to which admission is requested.

(b) An admission request must be in writing and signed by the person requesting the admission.

(c) A person or agency appointed as the guardian or a managing conservator of a minor younger than 16 years of age and acting as an employee or agent of the state or a political subdivision of the state may request admission of the minor only with the minor's consent.

(d) The administrator of an inpatient mental health facility may admit a minor who is 16 years of age or older to an inpatient mental health facility as a voluntary patient without the consent of the minor's parent, managing conservator, or guardian.

(e) A request for admission as a voluntary patient must state that the person for whom admission is requested agrees to voluntarily remain in the facility until the person's discharge and that the person consents to the diagnosis, observation, care, and treatment provided until the earlier of:

- (1) the person's discharge; or
- (2) the expiration of 96 hours after the time a written request for release is filed as provided by Section 572.004.

Sec. 572.002. **ADMISSION.** The facility administrator or the administrator's authorized, qualified designee may admit a person for whom a proper request for voluntary inpatient services is filed if the administrator or the designee determines:

- (1) from a preliminary examination that the person has symptoms of mental illness and will benefit from the inpatient services;
- (2) that the person has been informed of the person's rights as a voluntary patient; and
- (3) that the admission was voluntarily agreed to by the person or, if the person is younger than 16 years of age, by the person's parent, managing conservator, or guardian.

Sec. 572.003. **RIGHTS OF PATIENTS.** (a) A person's voluntary admission to an inpatient mental health facility under this chapter does not affect the person's civil rights or legal capacity or affect the person's right to obtain a writ of habeas corpus.

(b) In addition to the rights provided by Sections 572.004, 576.001, 576.006, 576.007, 576.008, 576.009, and 576.021, a person voluntarily admitted to an inpatient mental health facility under this chapter has the right:

- (1) to be reviewed periodically to determine the person's need for continued inpatient treatment; and
 - (2) to have an application for court-ordered mental health services filed only as provided by Section 572.005.
- (c) A person admitted to an inpatient mental health facility under this chapter shall be informed of the rights provided under this section and Section 572.004:
- (1) orally in simple, nontechnical terms, within 24 hours after the time the person is admitted, and in writing in the person's primary language, if possible; or
 - (2) through the use of a means reasonably calculated to communicate with a hearing impaired or visually impaired person, if applicable.
- (d) The patient's parent, managing conservator, or guardian shall also be informed of the patient's rights as required by this section if the patient is a minor.

Sec. 572.004. **DISCHARGE OR RELEASE.** (a) Except as provided by Subsection (b), a voluntary patient is entitled to leave an inpatient mental health facility within 96 hours after the time a written request for release is filed with the facility administrator or the administrator's designee. The request must be signed by the patient or a person responsible for the patient's admission.

(b) The patient is not entitled to leave the facility if before the end of the 96-hour period:

- (1) a written withdrawal of the request for release is filed; or
 - (2) an application for court-ordered mental health services or emergency detention is filed and the patient is detained in accordance with this subtitle.
- (c) A plan for continuing care shall be prepared in accordance with Section 574.081 for each patient discharged or released if sufficient time is available before release.
- (d) The patient or other person who files a request for release of a patient shall be notified that the person filing the request assumes all responsibility for the patient on discharge.

Sec. 572.005. **APPLICATION FOR COURT-ORDERED TREATMENT.** An application for court-ordered mental health services may not be filed against a patient receiving voluntary inpatient services unless:

- (1) a request for release of the patient has been filed with the facility administrator; or
- (2) in the facility administrator's opinion, the patient meets the criteria for court-ordered mental health services and:
 - (A) is absent from the facility without authorization; or

(B) refuses or is unable to consent to appropriate and necessary psychiatric treatment.

CHAPTER 573. EMERGENCY DETENTION

SUBCHAPTER A. APPREHENSION BY PEACE OFFICER

Sec. 573.001. APPREHENSION BY PEACE OFFICER WITHOUT WARRANT
Sec. 573.002. PEACE OFFICER'S APPLICATION FOR DETENTION

[Sections 573.003–573.010 reserved for expansion]

SUBCHAPTER B. MAGISTRATE'S ORDER FOR EMERGENCY
APPREHENSION AND DETENTION

Sec. 573.011. APPLICATION FOR EMERGENCY DETENTION
Sec. 573.012. ISSUANCE OF WARRANT

[Sections 573.013–573.020 reserved for expansion]

SUBCHAPTER C. EMERGENCY DETENTION, RELEASE, AND RIGHTS

Sec. 573.021. PRELIMINARY EXAMINATION
Sec. 573.022. EMERGENCY ADMISSION AND DETENTION
Sec. 573.023. RELEASE FROM EMERGENCY DETENTION
Sec. 573.024. TRANSPORTATION AFTER RELEASE
Sec. 573.025. RIGHTS OF PERSONS APPREHENDED OR DETAINED

CHAPTER 573. EMERGENCY DETENTION

SUBCHAPTER A. APPREHENSION BY PEACE OFFICER

Sec. 573.001. APPREHENSION BY PEACE OFFICER WITHOUT WARRANT. (a)
A peace officer, without a warrant, may take a person into custody if the officer:

(1) has reason to believe and does believe that:

(A) the person is mentally ill; and

(B) because of that mental illness there is a substantial risk of serious harm to the person or to others unless the person is immediately restrained; and

(2) believes that there is not sufficient time to obtain a warrant before taking the person into custody.

(b) A substantial risk of serious harm to the person or others under Subsection (a)(1)(B) may be demonstrated by:

(1) the person's behavior; or

(2) evidence of severe emotional distress and deterioration in the person's mental condition to the extent that the person cannot remain at liberty.

(c) The peace officer may form the belief that the person meets the criteria for apprehension:

(1) from a representation of a credible person; or

(2) on the basis of the conduct of the apprehended person or the circumstances under which the apprehended person is found.

(d) A peace officer who takes a person into custody under Subsection (a) shall immediately transport the apprehended person to:

(1) the nearest appropriate inpatient mental health facility; or

(2) a facility deemed suitable by the county's mental health authority, if an appropriate inpatient mental health facility is not available.

(e) A jail or similar detention facility may not be deemed suitable except in an extreme emergency.

(f) A person detained in a jail or a nonmedical facility shall be kept separate from any person who is charged with or convicted of a crime.

Sec. 573.002. PEACE OFFICER'S APPLICATION FOR DETENTION. (a) A peace officer shall immediately file an application for detention after transporting a person to a facility under Section 573.001.

(b) The application for detention must contain:

(1) a statement that the officer has reason to believe and does believe that the person evidences mental illness;

(2) a statement that the officer has reason to believe and does believe that the person evidences a substantial risk of serious harm to himself or others;

(3) a specific description of the risk of harm;

(4) a statement that the officer has reason to believe and does believe that the risk of harm is imminent unless the person is immediately restrained;

(5) a statement that the officer's beliefs are derived from specific recent behavior, overt acts, attempts, or threats that were observed by or reliably reported to the officer;

(6) a detailed description of the specific behavior, acts, attempts, or threats; and

(7) the name and relationship to the apprehended person of any person who reported or observed the behavior, acts, attempts, or threats.

[Sections 573.003–573.010 reserved for expansion]

SUBCHAPTER B. MAGISTRATE'S ORDER FOR EMERGENCY APPREHENSION AND DETENTION

Sec. 573.011. APPLICATION FOR EMERGENCY DETENTION. (a) An adult may file a written application for the emergency detention of another person.

(b) The application must state:

(1) that the applicant has reason to believe and does believe that the person evidences mental illness;

(2) that the applicant has reason to believe and does believe that the person evidences a substantial risk of serious harm to himself or others;

(3) a specific description of the risk of harm;

(4) that the applicant has reason to believe and does believe that the risk of harm is imminent unless the person is immediately restrained;

(5) that the applicant's beliefs are derived from specific recent behavior, overt acts, attempts, or threats;

(6) a detailed description of the specific behavior, acts, attempts, or threats; and

(7) a detailed description of the applicant's relationship to the person whose detention is sought.

(c) The application may be accompanied by any relevant information.

Sec. 573.012. ISSUANCE OF WARRANT. (a) An applicant for emergency detention must present the application personally to a magistrate. The magistrate shall examine the application and may interview the applicant.

(b) The magistrate shall deny the application unless the magistrate finds that there is reasonable cause to believe that:

(1) the person evidences mental illness;

- (2) the person evidences a substantial risk of serious harm to himself or others;
 - (3) the risk of harm is imminent unless the person is immediately restrained; and
 - (4) the necessary restraint cannot be accomplished without emergency detention.
- (c) A substantial risk of serious harm to the person or others under Subsection (b)(2) may be demonstrated by:
- (1) the person's behavior; or
 - (2) evidence of severe emotional distress and deterioration in the person's mental condition to the extent that the person cannot remain at liberty.
- (d) The magistrate shall issue a warrant for the person's immediate apprehension if the magistrate finds that each criterion under Subsection (b) is satisfied.
- (e) A person apprehended under this section shall be transported for a preliminary examination in accordance with Section 573.021 to:
- (1) the nearest appropriate inpatient mental health facility; or
 - (2) a facility deemed suitable by the county's mental health authority, if an appropriate inpatient mental health facility is not available.
- (f) The warrant serves as an application for detention in the facility. The warrant and a copy of the application for the warrant shall be immediately transmitted to the facility.

[Sections 573.013–573.020 reserved for expansion]

SUBCHAPTER C. EMERGENCY DETENTION, RELEASE, AND RIGHTS

Sec. 573.021. PRELIMINARY EXAMINATION. (a) A facility shall temporarily accept a person for whom an application for detention is filed.

(b) A person accepted for a preliminary examination may be detained in custody for not longer than 24 hours after the time the person is presented to the facility unless a written order for further detention is obtained. If the 24-hour period ends on a Saturday, Sunday, legal holiday, or before 4 p.m. on the first succeeding business day, the person may be detained until 4 p.m. on the first succeeding business day. If extremely hazardous weather conditions exist or a disaster occurs, the presiding judge or magistrate may, by written order made each day, extend by an additional 24 hours the period during which the person may be detained. The written order must declare that an emergency exists because of the weather or the occurrence of a disaster.

(c) A physician shall examine the person as soon as possible within 24 hours after the time the person is apprehended.

(d) A facility must comply with this section only to the extent that the commissioner determines that a facility has sufficient resources to perform the necessary services under this section.

(e) A person may not be detained in a private mental health facility without the consent of the facility administrator.

Sec. 573.022. EMERGENCY ADMISSION AND DETENTION. A person may be admitted to a facility for emergency detention only if the physician who conducted the preliminary examination of the person makes a written statement that:

- (1) is acceptable to the facility;
- (2) states that after a preliminary examination it is the physician's opinion that:
 - (A) the person is mentally ill;
 - (B) the person evidences a substantial risk of serious harm to himself or others;
 - (C) the described risk of harm is imminent unless the person is immediately restrained; and
 - (D) emergency detention is the least restrictive means by which the necessary restraint may be accomplished; and
- (3) includes:

- (A) a description of the nature of the person's mental illness;
- (B) a specific description of the risk of harm the person evidences that may be demonstrated either by the person's behavior or by evidence of severe emotional distress and deterioration in the person's mental condition to the extent that the person cannot remain at liberty; and
- (C) the specific detailed information from which the physician formed the opinion in Subdivision (2).

Sec. 573.023. RELEASE FROM EMERGENCY DETENTION. (a) A person apprehended under Subchapter A or detained under Subchapter B shall be released on completion of the preliminary examination unless the person is admitted to a facility under Section 573.022.

(b) A person admitted to a facility under Section 573.022 shall be released if the facility administrator determines at any time during the emergency detention period that one of the criteria prescribed by Section 573.022(2) no longer applies.

Sec. 573.024. TRANSPORTATION AFTER RELEASE. (a) Arrangements shall be made to transport a person who is entitled to release under Section 573.023 to:

- (1) the location of the person's apprehension;
- (2) the person's residence in this state; or
- (3) another suitable location.

(b) Subsection (a) does not apply to a person who is arrested or who objects to the transportation.

(c) If the person was apprehended under Subchapter A, arrangements must be made to immediately transport the person. If the person was detained under Subchapter B, the person is entitled to reasonably prompt transportation.

(d) The county in which the person was apprehended shall pay the costs of transporting the person.

Sec. 573.025. RIGHTS OF PERSONS APPREHENDED OR DETAINED. (a) A person apprehended or detained under this chapter has the right:

- (1) to be advised of the location of detention, the reasons for the detention, and the fact that the detention could result in a longer period of involuntary commitment;
- (2) to a reasonable opportunity to communicate with and retain an attorney;
- (3) to be transported to a location as provided by Section 573.024 if the person is not admitted for emergency detention unless the person is arrested or objects;
- (4) to be released from a facility as provided by Section 573.023; and
- (5) to be advised that communications with a mental health professional may be used in proceedings for further detention.

(b) A person apprehended or detained under this subtitle shall be informed of the rights provided by this section:

- (1) orally in simple, nontechnical terms, within 24 hours after the time the person is admitted to a facility, and in writing in the person's primary language if possible; or
- (2) through the use of a means reasonably calculated to communicate with a hearing or visually impaired person, if applicable.

CHAPTER 574. COURT-ORDERED MENTAL HEALTH SERVICES

SUBCHAPTER A. APPLICATION FOR COMMITMENT AND PREHEARING PROCEDURES

Sec. 574.001. APPLICATION FOR COURT-ORDERED MENTAL HEALTH SERVICES

Sec. 574.002. FORM OF APPLICATION

Sec. 574.003. APPOINTMENT OF ATTORNEY

Sec. 574.004. DUTIES OF ATTORNEY

- Sec. 574.005. SETTING ON APPLICATION
- Sec. 574.006. NOTICE
- Sec. 574.007. DISCLOSURE OF INFORMATION
- Sec. 574.008. COURT JURISDICTION AND TRANSFER
- Sec. 574.009. REQUIREMENT OF MEDICAL EXAMINATION
- Sec. 574.010. INDEPENDENT PSYCHIATRIC EVALUATION AND EXPERT TESTIMONY
- Sec. 574.011. CERTIFICATE OF MEDICAL EXAMINATION FOR MENTAL ILLNESS
- Sec. 574.012. RECOMMENDATION FOR TREATMENT
- Sec. 574.013. LIBERTY PENDING HEARING

[Sections 574.014–574.020 reserved for expansion]

SUBCHAPTER B. PROTECTIVE CUSTODY

- Sec. 574.021. MOTION FOR ORDER OF PROTECTIVE CUSTODY
- Sec. 574.022. ISSUANCE OF ORDER
- Sec. 574.023. APPREHENSION UNDER ORDER
- Sec. 574.024. APPOINTMENT OF ATTORNEY
- Sec. 574.025. PROBABLE CAUSE HEARING
- Sec. 574.026. ORDER FOR CONTINUED DETENTION
- Sec. 574.027. DETENTION IN PROTECTIVE CUSTODY
- Sec. 574.028. RELEASE FROM DETENTION

[Sections 574.029–574.030 reserved for expansion]

**SUBCHAPTER C. PROCEEDINGS FOR COURT-ORDERED
MENTAL HEALTH SERVICES**

- Sec. 574.031. GENERAL PROVISIONS RELATING TO HEARING
- Sec. 574.032. RIGHT TO JURY
- Sec. 574.033. RELEASE AFTER HEARING
- Sec. 574.034. ORDER FOR TEMPORARY MENTAL HEALTH SERVICES
- Sec. 574.035. ORDER FOR EXTENDED MENTAL HEALTH SERVICES
- Sec. 574.036. ORDER OF CARE OR COMMITMENT
- Sec. 574.037. COURT-ORDERED OUTPATIENT SERVICES

[Sections 574.038–574.040 reserved for expansion]

**SUBCHAPTER D. DESIGNATION OF FACILITY AND
TRANSPORTATION OF PATIENT**

- Sec. 574.041. DESIGNATION OF FACILITY
- Sec. 574.042. COMMITMENT TO PRIVATE FACILITY
- Sec. 574.043. COMMITMENT TO FEDERAL FACILITY
- Sec. 574.044. COMMITMENT TO FACILITY OF THE INSTITUTIONAL DIVISION OF
THE TEXAS DEPARTMENT OF CRIMINAL JUSTICE
- Sec. 574.045. TRANSPORTATION OF PATIENT
- Sec. 574.046. WRIT OF COMMITMENT
- Sec. 574.047. TRANSCRIPT
- Sec. 574.048. ACKNOWLEDGMENT OF PATIENT DELIVERY

[Sections 574.049–574.060 reserved for expansion]

SUBCHAPTER E. POST-COMMITMENT PROCEEDINGS

- Sec. 574.061. MODIFICATION OF ORDER FOR INPATIENT TREATMENT
- Sec. 574.062. MOTION FOR MODIFICATION OF ORDER FOR OUTPATIENT TREATMENT

- Sec. 574.063. ORDER FOR TEMPORARY DETENTION**
- Sec. 574.064. APPREHENSION AND RELEASE UNDER TEMPORARY DETENTION ORDER**
- Sec. 574.065. ORDER OF MODIFICATION OF ORDER FOR OUTPATIENT SERVICES**
- Sec. 574.066. RENEWAL OF ORDER FOR EXTENDED MENTAL HEALTH SERVICES**
- Sec. 574.067. MOTION FOR REHEARING**
- Sec. 574.068. REQUEST FOR REEXAMINATION**
- Sec. 574.069. HEARING ON REQUEST FOR REEXAMINATION**
- Sec. 574.070. APPEAL**

[Sections 574.071–574.080 reserved for expansion]

SUBCHAPTER F. FURLOUGH, DISCHARGE, AND TERMINATION OF COURT-ORDERED MENTAL HEALTH SERVICES

- Sec. 574.081. CONTINUING CARE PLAN BEFORE FURLOUGH OR DISCHARGE**
- Sec. 574.082. PASS OR FURLOUGH FROM INPATIENT CARE**
- Sec. 574.083. RETURN TO FACILITY UNDER FACILITY ADMINISTRATOR'S CERTIFICATE OR COURT ORDER**
- Sec. 574.084. REVOCATION OF FURLOUGH**
- Sec. 574.085. DISCHARGE ON EXPIRATION OF COURT ORDER**
- Sec. 574.086. DISCHARGE BEFORE EXPIRATION OF COURT ORDER**
- Sec. 574.087. CERTIFICATE OF DISCHARGE**

CHAPTER 574. COURT-ORDERED MENTAL HEALTH SERVICES

SUBCHAPTER A. APPLICATION FOR COMMITMENT AND PREHEARING PROCEDURES

Sec. 574.001. APPLICATION FOR COURT-ORDERED MENTAL HEALTH SERVICES. (a) A county or district attorney or other adult may file a sworn written application for court-ordered mental health services. Only the district or county attorney may file an application that is not accompanied by a certificate of medical examination.

(b) The application must be filed with the county clerk in the county in which the proposed patient:

(1) resides;

(2) is found; or

(3) is receiving mental health services by court order or under Subchapter A, Chapter 573.

(c) If the application is not filed in the county in which the proposed patient resides, the court may, on request of the proposed patient or the proposed patient's attorney and if good cause is shown, transfer the application to that county.

(d) An order transferring a criminal defendant against whom all charges have been dismissed to the appropriate court for a hearing on court-ordered mental health services in accordance with Section 7, Article 46.02, Code of Criminal Procedure, serves as an application under this section. The order must state that all charges have been dismissed.

Sec. 574.002. FORM OF APPLICATION. (a) An application for court-ordered mental health services must be styled using the proposed patient's initials and not the proposed patient's full name.

(b) The application must state whether the application is for temporary or extended mental health services. An application for extended mental health services must state that the person has received court-ordered inpatient mental health services under this subtitle or under Section 5, Article 46.02, Code of Criminal Procedure, for at least 60 consecutive days during the preceding 12 months.

(c) Any application must contain the following information according to the applicant's information and belief:

- (1) the proposed patient's name and address;
- (2) the proposed patient's county of residence in this state;
- (3) a statement that the proposed patient is mentally ill and meets the criteria in Section 574.034 or 574.035 for court-ordered mental health services; and
- (4) whether the proposed patient is charged with a criminal offense.

Sec. 574.003. APPOINTMENT OF ATTORNEY. (a) The judge shall appoint an attorney to represent a proposed patient within 24 hours after the time an application for court-ordered mental health services is filed if the proposed patient does not have an attorney. At that time, the judge shall also appoint a language or sign interpreter if necessary to ensure effective communication with the attorney in the proposed patient's primary language.

(b) The court shall inform the attorney in writing of the attorney's duties under Section 574.004.

(c) The proposed patient's attorney shall be furnished with all records and papers in the case and is entitled to have access to all hospital and physicians' records.

Sec. 574.004. DUTIES OF ATTORNEY. (a) An attorney representing a proposed patient shall interview the proposed patient within a reasonable time before the date of the hearing on the application.

(b) The attorney shall thoroughly discuss with the proposed patient the law and facts of the case, the proposed patient's options, and the grounds on which the court-ordered mental health services are being sought. A court-appointed attorney shall also inform the proposed patient that the proposed patient may obtain personal legal counsel at the proposed patient's expense instead of accepting the court-appointed counsel.

(c) The attorney may advise the proposed patient of the wisdom of agreeing to or resisting efforts to provide mental health services, but the proposed patient shall make the decision to agree to or resist the efforts. Regardless of an attorney's personal opinion, the attorney shall use all reasonable efforts within the bounds of law to advocate the proposed patient's right to avoid court-ordered mental health services if the proposed patient expresses a desire to avoid the services. If the proposed patient desires, the attorney shall advocate for the least restrictive treatment alternatives to court-ordered inpatient mental health services.

(d) Before a hearing, the attorney shall:

- (1) review the application, the certificates of medical examination for mental illness, and the proposed patient's relevant medical records;
- (2) interview supporting witnesses and other witnesses who will testify at the hearing; and
- (3) explore the least restrictive treatment alternatives to court-ordered inpatient mental health services.

(e) The attorney shall advise the proposed patient of the proposed patient's right to attend a hearing or to waive the right to attend a hearing and shall inform the court why a proposed patient is absent from a hearing.

(f) The attorney shall discuss with the proposed patient:

- (1) the procedures for appeal, release, and discharge if the court orders participation in mental health services; and
- (2) other rights the proposed patient may have during the period of the court's order.

(g) To withdraw from a case after interviewing a proposed patient, an attorney must file a motion to withdraw with the court. The court shall act on the motion as soon as possible. An attorney may not withdraw from a case unless the withdrawal is authorized by court order.

(h) The attorney is responsible for a person's legal representation until:

- (1) the application is dismissed;

- (2) an appeal from an order directing treatment is taken;
- (3) the time for giving notice of appeal expires by operation of law; or
- (4) another attorney assumes responsibility for the case.

Sec. 574.005. **SETTING ON APPLICATION.** (a) The judge or a magistrate designated under Section 574.021(e) shall set a date for a hearing to be held within 14 days after the date on which the application is filed.

(b) The hearing may not be held during the first three days after the application is filed if the proposed patient or the proposed patient's attorney objects.

(c) The court may grant one or more continuances of the hearing on the motion by a party and for good cause shown or on agreement of the parties. However, the hearing shall be held not later than the 30th day after the date on which the original application is filed. If extremely hazardous weather conditions exist or a disaster occurs that threatens the safety of the proposed patient or other essential parties to the hearing, the judge or magistrate may, by written order made each day, postpone the hearing for 24 hours. The written order must declare that an emergency exists because of the weather or the occurrence of a disaster.

Sec. 574.006. **NOTICE.** (a) The proposed patient and his attorney are entitled to receive a copy of the application and written notice of the time and place of the hearing immediately after the date for the hearing is set.

(b) A copy of the application and the written notice shall be delivered in person or sent by certified mail to the proposed patient's:

- (1) parent, if the proposed patient is a minor;
- (2) appointed guardian, if the proposed patient is the subject of a guardianship; or
- (3) each managing and possessory conservator that has been appointed for the proposed patient.

(c) Notice may be given to the proposed patient's next of kin if the relative is the applicant and the parent cannot be located and a guardian or conservator has not been appointed.

Sec. 574.007. **DISCLOSURE OF INFORMATION.** (a) The proposed patient's attorney may request information from the county or district attorney in accordance with this section if the attorney cannot otherwise obtain the information.

(b) If the proposed patient's attorney requests the information at least 48 hours before the time set for the hearing, the county or district attorney shall, within a reasonable time before the hearing, provide the attorney with a statement that includes:

- (1) the provisions of this subtitle that will be relied on at the hearing to establish that the proposed patient requires court-ordered temporary or extended mental health services;
- (2) the name, address, and telephone number of each witness who may testify at the hearing;
- (3) a brief description of the reasons why court-ordered temporary or extended mental health services are required; and
- (4) a list of any acts committed by the proposed patient that the applicant will attempt to prove at the hearing.

(c) At the hearing, the judge may admit evidence or testimony that relates to matters not disclosed under Subsection (b) if the admission would not deprive the proposed patient of a fair opportunity to contest the evidence or testimony.

Sec. 574.008. **COURT JURISDICTION AND TRANSFER.** (a) A proceeding under Subchapter C or E must be held in the statutory or constitutional county court that has the jurisdiction of a probate court in mental illness matters.

(b) If the hearing is to be held in a county court in which the judge is not a licensed attorney, the proposed patient or the proposed patient's attorney may request that the proceeding be transferred to a court with a judge who is licensed to practice law in this

state. The county judge shall transfer the case after receiving the request and the receiving court shall hear the case as if it had been originally filed in that court.

(c) If a patient is receiving temporary mental health services in a county other than the county in which the court that entered the temporary order is located and requires extended mental health services, the county in which the original order was issued shall pay the expenses of transporting the patient back to the county for the hearing unless the court that entered the temporary order arranges with the appropriate court in the county in which the patient is receiving services to hold the hearing on court-ordered extended mental health services before the original order expires.

Sec. 574.009. REQUIREMENT OF MEDICAL EXAMINATION. (a) A hearing on an application for court-ordered mental health services may not be held unless there are on file with the court at least two certificates of medical examination for mental illness completed by different physicians each of whom has examined the proposed patient during the preceding 30 days. At least one of the physicians must be a psychiatrist if a psychiatrist is available in the county.

(b) If the certificates are not filed with the application, the judge or magistrate designated under Section 574.021(e) may appoint the necessary physicians to examine the proposed patient and file the certificates.

(c) The judge or designated magistrate may order the proposed patient to submit to the examination and may issue a warrant authorizing a peace officer to take the proposed patient into custody for the examination.

(d) If the certificates required under this section are not on file at the time set for the hearing on the application, the judge shall dismiss the application and order the immediate release of the proposed patient if that person is not at liberty.

Sec. 574.010. INDEPENDENT PSYCHIATRIC EVALUATION AND EXPERT TESTIMONY. (a) The court may order an independent evaluation of the proposed patient by a psychiatrist chosen by the proposed patient if the court determines that the evaluation will assist the finder of fact. The psychiatrist may testify on behalf of the proposed patient.

(b) If the court determines that the proposed patient is indigent, the court may authorize reimbursement to the attorney ad litem for court-approved expenses incurred in obtaining expert testimony and may order the proposed patient's county of residence to pay the expenses.

Sec. 574.011. CERTIFICATE OF MEDICAL EXAMINATION FOR MENTAL ILLNESS. (a) A certificate of medical examination for mental illness must be sworn to, dated, and signed by the examining physician. The certificate must include:

- (1) the name and address of the examining physician;
- (2) the name and address of the person examined;
- (3) the date and place of the examination;
- (4) a brief diagnosis of the examined person's physical and mental condition;
- (5) the period, if any, during which the examined person has been under the care of the examining physician;
- (6) an accurate description of the mental health treatment, if any, given by or administered under the direction of the examining physician; and
- (7) the examining physician's opinion that:
 - (A) the examined person is mentally ill; and
 - (B) as a result of that illness the examined person:
 - (i) is likely to cause serious harm to himself;
 - (ii) is likely to cause serious harm to others; or
 - (iii) will, if not treated, continue to suffer severe and abnormal mental, emotional, or physical distress, will continue to experience deterioration of his ability to function independently, and is unable to make a rational and informed decision as to whether or not to submit to treatment.

(b) The examining physician must specify in the certificate which criterion listed in Subsection (a)(7)(B) forms the basis for the physician's opinion.

(c) If the certificate is offered in support of an application for extended mental health services, the certificate must also include the examining physician's opinion that the examined person's condition is expected to continue for more than 90 days.

(d) If the certificate is offered in support of a motion for a protective custody order, the certificate must also include the examining physician's opinion that the examined person presents a substantial risk of serious harm to himself or others if not immediately restrained. The harm may be demonstrated by the examined person's behavior or by evidence of severe emotional distress and deterioration in the examined person's mental condition to the extent that the examined person cannot remain at liberty.

(e) The certificate must include the detailed reason for each of the examining physician's opinions under this section.

Sec. 574.012. RECOMMENDATION FOR TREATMENT. (a) The commissioner shall designate a facility or provider in the county in which an application is filed to file with the court a recommendation for the most appropriate treatment alternative for the proposed patient.

(b) The facility or provider that is designated must be:

(1) the single portal authority for the county; or

(2) a community center or any other appropriate facility or provider in the county if the county is not served by a single portal authority.

(c) The court shall direct the designated entity to file, before the date set for the hearing, its recommendation for the proposed patient's treatment.

(d) The hearing on an application may not be held before the recommendation for treatment is filed unless the court determines that an emergency exists.

(e) This section does not relieve a county of its responsibility under other provisions of this subtitle to diagnose, care for, or treat persons with mental illness.

(f) This section does not apply to a person for whom treatment in a private mental health facility is proposed.

Sec. 574.013. LIBERTY PENDING HEARING. The proposed patient is entitled to remain at liberty pending the hearing on the application unless the person is detained under an appropriate provision of this subtitle.

[Sections 574.014–574.020 reserved for expansion]

SUBCHAPTER B. PROTECTIVE CUSTODY

Sec. 574.021. MOTION FOR ORDER OF PROTECTIVE CUSTODY. (a) A motion for an order of protective custody may be filed only in the court in which an application for court-ordered mental health services is pending.

(b) The motion may be filed by the county or district attorney or on the court's own motion.

(c) The motion must state that:

(1) the judge or county or district attorney has reason to believe and does believe that the proposed patient meets the criteria authorizing the court to order protective custody; and

(2) the belief is derived from:

(A) the representations of a credible person;

(B) the proposed patient's conduct; or

(C) the circumstances under which the proposed patient is found.

(d) The motion must be accompanied by a certificate of medical examination for mental illness prepared by a physician who has examined the proposed patient not earlier than the fifth day before the day the motion is filed.

(e) The judge of the court in which the application is pending may designate a magistrate to issue protective custody orders in the judge's absence.

Sec. 574.022. ISSUANCE OF ORDER. (a) The judge or designated magistrate may issue a protective custody order if the judge or magistrate determines:

(1) that a physician has stated his opinion and the detailed reasons for his opinion that the proposed patient is mentally ill; and

(2) the proposed patient presents a substantial risk of serious harm to himself or others if not immediately restrained pending the hearing.

(b) The determination that the proposed patient presents a substantial risk of serious harm may be demonstrated by the proposed patient's behavior or by evidence of severe emotional distress and deterioration in the proposed patient's mental condition to the extent that the proposed patient cannot remain at liberty.

(c) The judge or magistrate may make a determination that the proposed patient meets the criteria prescribed by Subsection (a) from the application and certificate alone if the judge or magistrate determines that the conclusions of the applicant and certifying physician are adequately supported by the information provided.

(d) The judge or magistrate may take additional evidence if a fair determination of the matter cannot be made from consideration of the application and certificate only.

(e) The judge or magistrate may issue a protective custody order for a proposed patient who is charged with a criminal offense if the proposed patient meets the requirements of this section and the facility administrator designated to detain the proposed patient agrees to the detention.

Sec. 574.023. APPREHENSION UNDER ORDER. (a) A protective custody order shall direct a peace officer or other designated person to take the proposed patient into protective custody and transport the person immediately to:

(1) a facility of the single portal authority for the area;

(2) an appropriate inpatient mental health facility, if no single portal authority serves the area; or

(3) a facility deemed suitable by the county's mental health authority, if no single portal authority serves the area and an appropriate inpatient mental health facility is not available.

(b) The proposed patient shall be detained in the facility until a hearing is held under Section 574.025.

(c) If a single portal authority lacks the local resources to care for a proposed patient, the authority shall transfer the proposed patient to a state hospital or, on the request of the authority, the judge may order that the proposed patient be detained in a state hospital.

(d) A facility must comply with this section only to the extent that the commissioner determines that the facility has sufficient resources to perform the necessary services.

(e) A person may not be detained in a private mental health facility without the consent of the facility administrator.

Sec. 574.024. APPOINTMENT OF ATTORNEY. (a) When a protective custody order is signed, the judge or designated magistrate shall appoint an attorney to represent a proposed patient who does not have an attorney.

(b) Within a reasonable time before a hearing is held under Section 574.025, the court that ordered the protective custody shall provide to the proposed patient and the proposed patient's attorney a written notice that states:

(1) that the proposed patient has been placed under a protective custody order;

(2) the grounds for the order; and

(3) the time and place of the hearing to determine probable cause.

Sec. 574.025. PROBABLE CAUSE HEARING. (a) A hearing must be held to determine if:

(1) there is probable cause to believe that a proposed patient under a protective custody order presents a substantial risk of serious harm to himself or others to the extent that he cannot be at liberty pending the hearing on court-ordered mental health services; and

(2) a physician has stated his opinion and the detailed reasons for his opinion that the proposed patient is mentally ill.

(b) The hearing must be held not later than 72 hours after the time that the proposed patient was detained under a protective custody order. If the period ends on a Saturday, Sunday, or legal holiday, the hearing must be held on the next day that is not a Saturday, Sunday, or legal holiday. The judge or magistrate may postpone the hearing each day for an additional 24 hours if the judge or magistrate declares that an extreme emergency exists because of extremely hazardous weather conditions or the occurrence of a disaster that threatens the safety of the proposed patient or another essential party to the hearing.

(c) The hearing shall be held before a magistrate or, at the discretion of the presiding judge, before a master appointed by the presiding judge. The master is entitled to reasonable compensation.

(d) The proposed patient and the proposed patient's attorney shall have an opportunity at the hearing to appear and present evidence to challenge the allegation that the proposed patient presents a substantial risk of serious harm to himself or others.

(e) The magistrate or master may consider evidence, including letters, affidavits, and other material, that may not be admissible or sufficient in a subsequent commitment hearing.

(f) The state may prove its case on the physician's certificate of medical examination filed in support of the initial motion.

Sec. 574.026. ORDER FOR CONTINUED DETENTION. (a) The magistrate or master shall order that a proposed patient remain in protective custody if the magistrate or master determines after the hearing that an adequate factual basis exists for probable cause to believe that the proposed patient presents a substantial risk of serious harm to himself or others to the extent that he cannot remain at liberty pending the hearing on court-ordered mental health services.

(b) The magistrate or master shall arrange for the proposed patient to be returned to the mental health facility or other suitable place, along with copies of the certificate of medical examination, any affidavits or other material submitted as evidence in the hearing, and the notification prepared as prescribed by Subsection (d).

(c) A copy of the notification of probable cause hearing and the supporting evidence shall be filed with the court that entered the original order of protective custody.

(d) The notification of probable cause hearing shall read as follows:

(Style of Case)

NOTIFICATION OF PROBABLE CAUSE HEARING

On this the _____ day of _____, 19____, the undersigned hearing officer heard evidence concerning the need for protective custody of _____ (hereinafter referred to as proposed patient). The proposed patient was given the opportunity to challenge the allegations that (s)he presents a substantial risk of serious harm to self or others.

The proposed patient and his attorney _____ have been given written
(attorney)

notice that the proposed patient was placed under an order of protective custody and the reasons for such order on _____.

(date of notice)

I have examined the certificate of medical examination for mental illness and _____ Based on this evidence, I find that there is probable

(other evidence considered)
cause to believe that the proposed patient presents a substantial risk of serious harm to

himself (yes ____ or no ____) or others (yes ____ or no ____) such that (s)he cannot be at liberty pending final hearing because _____

(reasons for finding; type of risk found)

Sec. 574.027. DETENTION IN PROTECTIVE CUSTODY. (a) A person under a protective custody order shall be detained in:

- (1) a facility of the single portal authority for the area;
- (2) an appropriate inpatient mental health facility, if no single portal authority serves the area; or
- (3) a facility deemed suitable by the county's mental health authority, if no single portal authority serves the area and an appropriate inpatient mental health facility is not available.

(b) The facility administrator or the administrator's designee shall detain a person under a protective custody order in the facility until a final order for court-ordered mental health services is entered or the person is released or discharged under Section 574.028.

(c) A person under a protective custody order may not be detained in a nonmedical facility used to detain persons who are charged with or convicted of a crime except because of and during an extreme emergency and in no case for longer than 72 hours, excluding Saturdays, Sundays, legal holidays, and the period prescribed by Section 574.025(b) for an extreme emergency. The person must be isolated from any person who is charged with or convicted of a crime.

(d) The county health authority shall ensure that proper care and medical attention are made available to a person who is detained in a nonmedical facility under Subsection (c).

(e) If a single portal authority lacks the local resources to care for a person, the authority shall transfer the person to a state mental hospital or, on the request of the authority, the judge may order that the person be detained in a state mental hospital.

Sec. 574.028. RELEASE FROM DETENTION. (a) The magistrate or master shall order the release of a person under a protective custody order if the magistrate or master determines after the hearing under Section 574.025 that no probable cause exists to believe that the proposed patient presents a substantial risk of serious harm to himself or others.

(b) Arrangements shall be made to return a person released under Subsection (a) to:

- (1) the location of the person's apprehension;
- (2) the person's residence in this state; or
- (3) another suitable location.

(c) A facility administrator shall discharge a person held under a protective custody order if:

(1) the facility administrator does not receive notice that the person's continued detention is authorized after a probable cause hearing held within 72 hours after the detention began, excluding Saturdays, Sundays, legal holidays, and the period prescribed by Section 574.025(b) for extreme emergencies;

(2) a final order for court-ordered mental health services has not been entered within the time prescribed by Section 574.005; or

(3) the facility administrator or the administrator's designee determines that the person no longer meets the criteria for protective custody prescribed by Section 574.022.

[Sections 574.029–574.030 reserved for expansion]

SUBCHAPTER C. PROCEEDINGS FOR COURT-ORDERED MENTAL HEALTH SERVICES

Sec. 574.031. GENERAL PROVISIONS RELATING TO HEARING. (a) Except as provided by Subsection (b), the judge may hold a hearing on an application for court-or-

dered mental health services at any suitable location in the county. The hearing should be held in a physical setting that is not likely to have a harmful effect on the proposed patient.

(b) On the request of the proposed patient or the proposed patient's attorney the hearing on the application shall be held in the county courthouse.

(c) The proposed patient is entitled to be present at the hearing. The proposed patient or the proposed patient's attorney may waive this right.

(d) The hearing must be open to the public unless the proposed patient or the proposed patient's attorney requests that the hearing be closed and the judge determines that there is good cause to close the hearing.

(e) The Texas Rules of Civil Evidence apply to the hearing unless the rules are inconsistent with this subtitle.

(f) The court may consider the testimony of a nonphysician mental health professional in addition to medical or psychiatric testimony.

(g) The hearing is on the record, and the state must prove each element of the applicable criteria by clear and convincing evidence.

(h) A judge who holds a hearing under this section in hospitals or locations other than the county courthouse is entitled to be reimbursed for the judge's reasonable and necessary expenses related to holding a hearing at that location. The expenses shall be collected as court costs.

(i) A judge who holds hearings at locations other than the county courthouse also may receive a reasonable salary supplement in an amount set by the commissioners court.

Sec. 574.032. RIGHT TO JURY. (a) A hearing for temporary mental health services must be before the court unless the proposed patient or the proposed patient's attorney requests a jury.

(b) A hearing for extended mental health services must be before a jury unless the proposed patient or the proposed patient's attorney waives the right to a jury.

(c) A waiver of the right to a jury must be in writing, under oath, and signed and sworn to by the proposed patient and the proposed patient's attorney unless the proposed patient or the attorney orally waives the right to a jury in the court's presence.

(d) The court may permit an oral or written waiver of the right to a jury to be withdrawn for good cause shown. The withdrawal must be made not later than the eighth day before the date on which the hearing is scheduled.

(e) A court may not require a jury fee.

(f) In a hearing before a jury, the jury shall determine if the proposed patient is mentally ill and meets the criteria for court-ordered mental health services. The jury may not make a finding about the type of services to be provided to the proposed patient.

Sec. 574.033. RELEASE AFTER HEARING. (a) The court shall enter an order denying an application for court-ordered temporary or extended mental health services if after a hearing the court or jury fails to find, from clear and convincing evidence, that the proposed patient is mentally ill and meets the applicable criteria for court-ordered mental health services.

(b) If the court denies the application, the court shall order the immediate release of a proposed patient who is not at liberty.

Sec. 574.034. ORDER FOR TEMPORARY MENTAL HEALTH SERVICES. (a) The judge or jury may determine that a proposed patient requires court-ordered temporary mental health services only if the judge or jury finds, from clear and convincing evidence, that:

- (1) the proposed patient is mentally ill; and
- (2) as a result of that mental illness the proposed patient:
 - (A) is likely to cause serious harm to himself;
 - (B) is likely to cause serious harm to others; or

(C) will, if not treated, continue to suffer severe and abnormal mental, emotional, or physical distress, will continue to experience deterioration of his ability to function independently, and is unable to make a rational and informed decision as to whether or not to submit to treatment.

(b) The judge or jury must specify which criterion listed in Subsection (a)(2) forms the basis for the decision.

(c) To be clear and convincing under this section, the evidence must include expert testimony and, unless waived, evidence of a recent overt act or a continuing pattern of behavior that tends to confirm the likelihood of serious harm to the proposed patient or others or the proposed patient's distress and the deterioration of ability to function.

(d) The proposed patient or the proposed patient's attorney, by a written document filed with the court, may waive the right to cross-examine witnesses, and, if that right is waived, the court may admit, as evidence, the certificates of medical examination for mental illness. The certificates admitted under this subsection constitute competent medical or psychiatric testimony, and the court may make its findings solely from the certificates.

(e) An order for temporary mental health services shall state that treatment is authorized for not longer than 90 days. The order may not specify a shorter period.

(f) A judge may not issue an order for temporary mental health services for a proposed patient who is charged with a criminal offense.

Sec. 574.035. ORDER FOR EXTENDED MENTAL HEALTH SERVICES. (a) The jury, or the judge if the right to a jury is waived, may determine that a proposed patient requires court-ordered extended mental health services only if the jury or judge finds, from clear and convincing evidence, that:

(1) the proposed patient is mentally ill;

(2) as a result of that mental illness the proposed patient:

(A) is likely to cause serious harm to himself;

(B) is likely to cause serious harm to others; or

(C) will, if not treated, continue to suffer severe and abnormal mental, emotional, or physical distress, will continue to experience deterioration of his ability to function independently, and is unable to make a rational and informed decision as to whether or not to submit to treatment;

(3) the proposed patient's condition is expected to continue for more than 90 days; and

(4) the proposed patient has received court-ordered inpatient mental health services under this subtitle or under Section 5, Article 46.02, Code of Criminal Procedure, for at least 60 consecutive days during the preceding 12 months.

(b) The jury or judge must specify which criterion listed in Subsection (a)(2) forms the basis for the decision.

(c) The jury or judge is not required to make the finding under Subsection (a)(4) if the proposed patient has already been subject to an order for extended mental health services.

(d) To be clear and convincing under this section, the evidence must include expert testimony and evidence of a recent overt act or a continuing pattern of behavior that tends to confirm the likelihood of serious harm to the proposed patient or others or the proposed patient's distress and the deterioration of ability to function.

(e) The court may not make its findings solely from the certificates of medical examination for mental illness but shall hear testimony. The court may not enter an order for extended mental health services unless appropriate findings are made and are supported by testimony taken at the hearing. The testimony must include competent medical or psychiatric testimony.

(f) An order for extended mental health services shall state that treatment is authorized for not longer than 12 months. The order may not specify a shorter period.

(g) A judge may not issue an order for extended mental health services for a proposed patient who is charged with a criminal offense.

Sec. 574.036. ORDER OF CARE OR COMMITMENT. (a) The judge shall dismiss the jury, if any, after a hearing in which a person is found to be mentally ill and to meet the criteria for court-ordered temporary or extended mental health services.

(b) The judge may hear additional evidence relating to alternative settings for care before entering an order relating to the setting for the care the person will receive.

(c) The judge shall consider in determining the setting for care the recommendation for the most appropriate treatment alternative filed under Section 574.012.

(d) The judge shall order the mental health services provided in the least restrictive appropriate setting available.

(e) The judge may enter an order:

(1) committing the person to a mental health facility for inpatient care; or

(2) requiring the person to participate in other mental health services, including community center programs and services provided by a private psychiatrist or psychologist.

Sec. 574.037. COURT-ORDERED OUTPATIENT SERVICES. (a) The court, in an order that directs a patient to participate in outpatient mental health services, shall identify a person who is responsible for those services. The person identified must be the facility administrator or an individual involved in providing court-ordered outpatient services. A person may not be designated as responsible for the ordered services without the person's consent unless the person is the facility administrator of a department facility or the facility administrator of a community center that provides mental health services in the region in which the committing court is located.

(b) The person responsible for the services shall submit to the court within two weeks after the court enters the order a general program of the treatment to be provided. The program must be incorporated into the court order.

(c) The person responsible for the services shall inform the court of:

(1) the patient's failure to comply with the court order; and

(2) any substantial change in the general program of treatment that occurs before the order expires.

(d) A facility must comply with this section to the extent that the commissioner determines that the designated mental health facility has sufficient resources to perform the necessary services.

(e) A patient may not be detained in a private mental health facility without the consent of the facility administrator.

[Sections 574.038–574.040 reserved for expansion]

SUBCHAPTER D. DESIGNATION OF FACILITY AND TRANSPORTATION OF PATIENT

Sec. 574.041. DESIGNATION OF FACILITY. (a) In an order for temporary or extended mental health services specifying inpatient care, the court shall commit the patient to a designated mental health facility. The court shall commit the patient to:

(1) the facility of a single portal authority for the area, if an authority has been designated for the area;

(2) a private mental hospital under Section 574.042;

(3) a hospital operated by a federal agency under Section 574.043; or

(4) an inpatient mental health facility of the institutional division of the Texas Department of Criminal Justice under Section 574.044.

(b) If a single portal authority lacks the local resources to care for a patient, the authority shall transfer the patient to a state mental hospital or, on the request of the authority, the judge may commit the patient directly to a state mental hospital.

(c) A court may not commit a patient to an inpatient mental health facility operated by a community center or other entity designated by the department to provide mental health services unless the facility is licensed under Chapter 577 and the court notifies the mental health authority serving the region in which the commitment is made.

Sec. 574.042. COMMITMENT TO PRIVATE FACILITY. The court may order a patient committed to a private mental hospital at no expense to the state if the court receives:

(1) an application signed by the patient or the patient's guardian or next friend requesting that the patient be placed in a designated private mental hospital at the patient's or applicant's expense; and

(2) written agreement from the hospital administrator of the private mental hospital to admit the patient and to accept responsibility for the patient in accordance with this subtitle.

Sec. 574.043. COMMITMENT TO FEDERAL FACILITY. (a) A court may order a patient committed to a federal agency that operates a mental hospital if the court receives written notice from the agency that facilities are available and that the patient is eligible for care or treatment in a facility. The court may place the patient in the agency's custody for transportation to the mental hospital.

(b) A patient admitted under court order to a hospital operated by a federal agency, regardless of location, is subject to the agency's rules.

(c) The hospital administrator has the same authority and responsibility with respect to the patient as the hospital administrator of a state mental hospital.

(d) The appropriate courts of this state retain jurisdiction to inquire at any time into the patient's mental condition and the necessity of the patient's continued hospitalization.

Sec. 574.044. COMMITMENT TO FACILITY OF THE INSTITUTIONAL DIVISION OF THE TEXAS DEPARTMENT OF CRIMINAL JUSTICE. The court shall commit an inmate patient to an inpatient mental health facility of the institutional division of the Texas Department of Criminal Justice if the court enters an order requiring temporary mental health services for the inmate patient under an application filed by a psychiatrist for the institutional division under Section 500.057, Government Code.

Sec. 574.045. TRANSPORTATION OF PATIENT. (a) The court may authorize the transportation of a patient to the designated mental health facility by:

(1) a relative or other responsible person who has a proper interest in the patient's welfare;

(2) the facility administrator of the designated mental health facility, if the administrator notifies the court that facility personnel are available to transport the patient; or

(3) the sheriff or constable, if no person is available under Subdivision (1) or (2).

(b) The patient's friends and relatives may accompany the patient at their own expense.

(c) A female patient must be accompanied by a female attendant unless the patient is accompanied by her father, husband, or adult brother or son.

(d) The patient may not be transported in a marked police or sheriff's car or accompanied by a uniformed officer unless other means are not available.

Sec. 574.046. WRIT OF COMMITMENT. The court shall direct the court clerk to issue to the person authorized to transport the patient two writs of commitment requiring the person to take custody of and transport the patient to the designated mental health facility.

Sec. 574.047. TRANSCRIPT. (a) The court clerk shall prepare a certified transcript of the proceedings in the hearing on court-ordered mental health services.

(b) The clerk shall send the transcript and any available information relating to the medical, social, and economic status and history of the patient and the patient's family to the designated mental health facility with the patient. The person authorized to transport the patient shall deliver the transcript and information to the facility personnel in charge of admissions.

Sec. 574.048. ACKNOWLEDGMENT OF PATIENT DELIVERY. The facility administrator, after receiving a copy of the writ of commitment and after admitting the patient, shall:

- (1) give the person transporting the patient a written statement acknowledging acceptance of the patient and of any personal property belonging to the patient; and
- (2) file a copy of the statement with the clerk of the committing court.

[Sections 574.049–574.060 reserved for expansion]

SUBCHAPTER E. POST-COMMITMENT PROCEEDINGS

Sec. 574.061. MODIFICATION OF ORDER FOR INPATIENT TREATMENT. (a) The facility administrator of a facility to which a patient is committed for inpatient mental health services may request the court that entered the commitment order to modify the order to require the patient to participate in outpatient mental health services.

(b) The facility administrator's request must explain in detail the reason for the request. The request must be accompanied by a certificate of medical examination for mental illness signed by a physician who examined the patient during the seven days preceding the request.

(c) The patient shall be given notice of the request.

(d) On request of the patient or any other interested person, the court shall hold a hearing on the request. The court shall appoint an attorney to represent the patient at the hearing. The hearing shall be held before the court without a jury and as prescribed by Section 574.031. The patient shall be represented by an attorney and receive proper notice.

(e) If a hearing is not requested, the court may make the decision solely from the request and the supporting certificate.

(f) If the court modifies the order, the court shall identify a person to be responsible for the outpatient services as prescribed by Section 574.037.

(g) The person responsible for the services must comply with Section 574.037(b).

(h) A modified order may not extend beyond the term of the original order.

Sec. 574.062. MOTION FOR MODIFICATION OF ORDER FOR OUTPATIENT TREATMENT. (a) The court that entered an order directing a patient to participate in outpatient mental health services may set a hearing to determine if the order should be modified in a way that is a substantial deviation from the original program of treatment incorporated in the court's order. The court may set the hearing on its own motion, at the request of the person responsible for the treatment, or at the request of any other interested person.

(b) The court shall appoint an attorney to represent the patient if a hearing is scheduled. The patient shall be given notice of the matters to be considered at the hearing. The notice must comply with the requirements of Section 574.006 for notice before a hearing on court-ordered mental health services.

(c) The hearing shall be held before the court, without a jury, and as prescribed by Section 574.031. The patient shall be represented by an attorney and receive proper notice.

Sec. 574.063. ORDER FOR TEMPORARY DETENTION. (a) The person responsible for a patient's court-ordered outpatient treatment or the facility administrator of the outpatient facility in which a patient receives treatment may file a sworn application for the patient's temporary detention pending the modification hearing under Section 574.062.

(b) The application must state the applicant's opinion and detail the reasons for the applicant's opinion that:

- (1) the patient meets the criteria described by Section 574.065(a); and
- (2) detention in an inpatient mental health facility is necessary to evaluate the appropriate setting for continued court-ordered services.

(c) The court may issue an order for temporary detention if a modification hearing is set and the court finds from the information in the application that there is probable cause to believe that the opinions stated in the application are valid.

(d) At the time the temporary detention order is signed, the judge shall appoint an attorney to represent a patient who does not have an attorney.

(e) Within 24 hours after the time detention begins, the court that issued the temporary detention order shall provide to the patient and the patient's attorney a written notice that states:

- (1) that the patient has been placed under a temporary detention order;
- (2) the grounds for the order; and
- (3) the time and place of the modification hearing.

Sec. 574.064. APPREHENSION AND RELEASE UNDER TEMPORARY DETENTION ORDER. (a) A temporary detention order shall direct a peace officer or other designated person to take the patient into custody and transport the patient immediately to:

- (1) the nearest appropriate inpatient mental health facility; or
- (2) a facility deemed suitable by the county's mental health authority, if an appropriate inpatient mental health facility is not available.

(b) A patient may be detained under a temporary detention order for not more than 72 hours, excluding Saturdays, Sundays, legal holidays, and the period prescribed by Section 574.025(b) for an extreme emergency.

(c) A facility administrator shall immediately release a patient held under a temporary detention order if the facility administrator does not receive notice that the patient's continued detention is authorized after a modification hearing held within the period prescribed by Subsection (b).

(d) A patient released from an inpatient mental health facility under Subsection (c) continues to be subject to the order for court-ordered outpatient services, if the order has not expired.

Sec. 574.065. ORDER OF MODIFICATION OF ORDER FOR OUTPATIENT SERVICES. (a) The court may modify an order for outpatient services at the modification hearing if the court determines that the patient continues to meet the applicable criteria for court-ordered mental health services prescribed by Section 574.034 or 574.035 and that:

- (1) the patient has not complied with the court's order; or
- (2) the patient's condition has deteriorated to the extent that outpatient services are no longer appropriate.

(b) The court may refuse to modify the order and may direct the patient to continue to participate in outpatient mental health services in accordance with the original order even if the criteria prescribed by Subsection (a) have been met.

(c) The court's decision to modify an order must be supported by at least one certificate of medical examination for mental illness signed by a physician who examined the patient not earlier than the seventh day before the date on which the hearing is held.

(d) A modification may include:

- (1) incorporating in the order a revised treatment program and providing for continued outpatient mental health services under the modified order, if a revised general program of treatment was submitted to and accepted by the court; or
- (2) providing for commitment to an inpatient mental health facility.

(e) A court may not extend the provision of mental health services beyond the period prescribed in the original order.

Sec. 574.066. RENEWAL OF ORDER FOR EXTENDED MENTAL HEALTH SERVICES. (a) A county or district attorney or other adult may file an application to renew an order for extended mental health services.

(b) The application must explain in detail why the person requests renewal. An application to renew an order committing the patient to extended inpatient mental health services must also explain in detail why a less restrictive setting is not appropriate.

(c) The application must be accompanied by two certificates of medical examination for mental illness signed by physicians who examined the patient during the 30 days preceding the date on which the application is filed.

(d) The court shall appoint an attorney to represent the patient when an application is filed.

(e) The patient, the patient's attorney, or other individual may request a hearing on the application. The court may set a hearing on its own motion. An application for which a hearing is requested or set is considered an original application for court-ordered extended mental health services.

(f) A court may not renew an order unless the court finds that the patient meets the criteria for extended mental health services prescribed by Sections 574.035(a)(1), (2), and (3). The court must make the findings prescribed by this subsection to renew an order, regardless of whether a hearing is requested or set. A renewed order authorizes treatment for not more than 12 months.

(g) If a hearing is not requested or set, the court may admit into evidence the certificates of medical examination for mental illness. The certificates constitute competent medical or psychiatric testimony and the court may make its findings solely from the certificates and the detailed request for renewal.

(h) The court, after renewing an order for extended inpatient mental health services, may modify the order to provide for outpatient mental health services in accordance with Section 574.037.

Sec. 574.067. MOTION FOR REHEARING. (a) The court may set aside an order requiring court-ordered mental health services and grant a motion for rehearing for good cause shown.

(b) Pending the hearing, the court may:

(1) stay the court-ordered mental health services and release the proposed patient from custody before the hearing if the court is satisfied that the proposed patient does not meet the criteria for protective custody under Section 574.022; and

(2) if the proposed patient is at liberty, require an appearance bond in an amount set by the court.

Sec. 574.068. REQUEST FOR REEXAMINATION. (a) A patient receiving court-ordered extended mental health services, or any interested person on the patient's behalf and with the patient's consent, may file a request with a court for a reexamination and a hearing to determine if the patient continues to meet the criteria for the services.

(b) The request must be filed in the county in which the patient is receiving the services.

(c) The court may, for good cause shown:

(1) require that the patient be reexamined;

(2) schedule a hearing on the request; and

(3) notify the facility administrator of the facility providing mental health services to the patient.

(d) A court is not required to order a reexamination or hearing if the request is filed within six months after an order for extended mental health services is entered or after a similar request is filed.

(e) After receiving the court's notice, the facility administrator shall arrange for the patient to be reexamined.

(f) The facility administrator or the administrator's qualified authorized designee shall immediately discharge the patient if the facility administrator or designee determines that the patient no longer meets the criteria for court-ordered extended mental health services.

(g) If the facility administrator or the administrator's designee determines that the patient continues to meet the criteria for court-ordered extended mental health services, the facility administrator or designee shall file a certificate of medical examination for mental illness with the court within 10 days after the date on which the request for reexamination and hearing is filed.

Sec. 574.069. HEARING ON REQUEST FOR REEXAMINATION. (a) A court that required a patient's reexamination under Section 574.068 may set a date and place for a hearing on the request if, not later than the 10th day after the date on which the request is filed:

(1) a certificate of medical examination for mental illness stating that the patient continues to meet the criteria for court-ordered extended mental health services has been filed; or

(2) a certificate has not been filed and the patient has not been discharged.

(b) At the time the hearing is set, the judge shall:

(1) appoint an attorney to represent a patient who does not have an attorney; and

(2) give notice of the hearing to the patient, the patient's attorney, and the facility administrator.

(c) The judge shall appoint a physician to examine the patient and file a certificate of medical examination for mental illness with the court. The judge shall appoint a physician who is not on the staff of the mental health facility in which the patient is receiving services and who is a psychiatrist if a psychiatrist is available in the county. The court shall ensure that the patient may be examined by a physician of the patient's choice and at the patient's own expense if requested by the patient.

(d) The hearing is held before the court and without a jury. The hearing must be held in accordance with the requirements for a hearing on an application for court-ordered mental health services.

(e) The court shall dismiss the request if the court finds from clear and convincing evidence that the patient continues to meet the criteria for court-ordered extended mental health services prescribed by Section 574.035.

(f) The judge shall order the facility administrator to discharge the patient if the court fails to find from clear and convincing evidence that the patient continues to meet the criteria.

Sec. 574.070. APPEAL. (a) An appeal from an order requiring court-ordered mental health services, or from a renewal or modification of an order, must be filed in the court of appeals for the county in which the order is entered.

(b) Notice of appeal must be filed not later than the 10th day after the date on which the order is signed.

(c) When an appeal is filed, the clerk shall immediately send a certified transcript of the proceedings to the court of appeals.

(d) Pending the appeal, the trial judge in whose court the cause is pending may:

(1) stay the order and release the patient from custody before the appeal if the judge is satisfied that the patient does not meet the criteria for protective custody under Section 574.022; and

(2) if the proposed patient is at liberty, require an appearance bond in an amount set by the court.

(e) The court of appeals and supreme court shall give an appeal under this section preference over all other cases and shall advance the appeal on the docket. The courts may suspend all rules relating to the time for filing briefs and docketing cases.

[Sections 574.071–574.080 reserved for expansion]

**SUBCHAPTER F. FURLOUGH, DISCHARGE, AND TERMINATION OF
COURT-ORDERED MENTAL HEALTH SERVICES**

Sec. 574.081. CONTINUING CARE PLAN BEFORE FURLOUGH OR DISCHARGE.

(a) The facility administrator shall prepare a continuing care plan for a patient who is scheduled to be furloughed or discharged if the patient requires continuing care.

(b) The facility administrator shall prepare the plan as prescribed by department rules and shall consult the patient and the mental health authority in the area in which the patient will reside before preparing the plan. The mental health authority is not required to participate in preparing a plan for a patient furloughed or discharged from a private mental health facility.

(c) The plan must address the patient's mental health and physical needs.

(d) The facility administrator shall deliver the plan and other appropriate information to the community center or other provider that will deliver the services if:

(1) the services are provided by:

(A) a community center or other provider that serves the county in which the patient will reside and that has been designated by the commissioner to perform continuing care services; or

(B) any other provider that agrees to accept the referral; and

(2) the provision of care by the center or provider is appropriate.

(e) A patient who is to be discharged may refuse the continuing care services.

Sec. 574.082. PASS OR FURLOUGH FROM INPATIENT CARE. (a) The facility administrator may permit a patient admitted to the facility under an order for temporary or extended inpatient mental health services to leave the facility under a pass or furlough.

(b) A pass authorizes the patient to leave the facility for not more than 72 hours. A furlough authorizes the patient to leave for a longer period.

(c) The pass or furlough may be subject to specified conditions.

(d) When a patient is furloughed, the facility administrator shall notify the court that issued the commitment order.

Sec. 574.083. RETURN TO FACILITY UNDER FACILITY ADMINISTRATOR'S CERTIFICATE OR COURT ORDER. (a) The facility administrator of a facility to which a patient was admitted for court-ordered inpatient health care services may have an absent patient taken into custody, detained, and returned to the facility by:

(1) signing a certificate authorizing the patient's return; or

(2) filing the certificate with a magistrate and requesting the magistrate to order the patient's return.

(b) A magistrate may issue an order directing a peace or health officer to take a patient into custody and return the patient to the facility if the facility administrator files the certificate as prescribed by this section.

(c) The facility administrator may sign or file the certificate if the facility administrator reasonably believes that:

(1) the patient is absent without authority from the facility;

(2) the patient has violated the conditions of a pass or furlough; or

(3) the patient's condition has deteriorated to the extent that the patient's continued absence from the facility under a pass or furlough is inappropriate.

(d) A peace or health officer shall take the patient into custody and return the patient to the facility as soon as possible if the patient's return is authorized by the facility administrator's certificate or the court order.

(e) The peace or health officer may take the patient into custody without having the certificate or court order in the officer's possession.

Sec. 574.084. REVOCATION OF FURLOUGH. (a) A furlough may be revoked only after an administrative hearing held in accordance with department rules. The hearing must be held within 72 hours after the patient is returned to the facility.

(b) A hearing officer shall conduct the hearing. The hearing officer may be a mental health professional if the person is not directly involved in treating the patient.

(c) The hearing is informal and the patient is entitled to present information and argument.

(d) The hearing officer may revoke the furlough if the officer determines that the revocation is justified under Section 574.083(c).

(e) A hearing officer who revokes a furlough shall place in the patient's file:

(1) a written notation of the decision; and

(2) a written explanation of the reasons for the decision and the information on which the hearing officer relied.

(f) The patient shall be permitted to leave the facility under the furlough if the hearing officer determines that the furlough should not be revoked.

Sec. 574.085. DISCHARGE ON EXPIRATION OF COURT ORDER. The facility administrator of a facility to which a patient was committed or from which a patient was required to receive temporary or extended inpatient or outpatient mental health services shall discharge the patient when the court order expires.

Sec. 574.086. DISCHARGE BEFORE EXPIRATION OF COURT ORDER. (a) The facility administrator of a facility to which a patient was committed for inpatient mental health services or the person responsible for providing outpatient mental health services may discharge the patient at any time before the court order expires if the facility administrator or person determines that the patient no longer meets the criteria for court-ordered mental health services.

(b) The facility administrator of a facility to which the patient was committed for inpatient mental health services shall consider before discharging the patient whether the patient should receive outpatient court-ordered mental health services in accordance with:

(1) a furlough under Section 574.082; or

(2) a modified order under Section 574.061 that directs the patient to participate in outpatient mental health services.

(c) A discharge under Subsection (a) terminates the court order, and the person discharged may not be required to submit to involuntary mental health services unless a new court order is entered in accordance with this subtitle.

Sec. 574.087. CERTIFICATE OF DISCHARGE. The facility administrator or the person responsible for outpatient care who discharges a patient under Section 574.085 or 574.086 shall prepare a discharge certificate and file it with the court that entered the order requiring mental health services.

CHAPTER 575. ADMISSION AND TRANSFER PROCEDURES FOR INPATIENT SERVICES

SUBCHAPTER A. ADMISSION PROCEDURES

Sec. 575.001. AUTHORIZATION FOR ADMISSION

Sec. 575.002. ADMISSION OF VOLUNTARY PATIENT TO PRIVATE MENTAL HOSPITAL

Sec. 575.003. ADMISSION OF ALCOHOLICS AND PERSONS CHARGED WITH CRIMINAL OFFENSE

[Sections 575.004–575.010 reserved for expansion]

SUBCHAPTER B. TRANSFER PROCEDURES

- Sec. 575.011. TRANSFER TO STATE MENTAL HOSPITAL OR SINGLE PORTAL AUTHORITY**
Sec. 575.012. TRANSFER OF PERSON WITH MENTAL RETARDATION TO STATE HOSPITAL
Sec. 575.013. TRANSFER OF PERSON WITH MENTAL RETARDATION TO STATE SCHOOL
Sec. 575.014. TRANSFER TO PRIVATE MENTAL HOSPITAL
Sec. 575.015. TRANSFER TO FEDERAL FACILITY
Sec. 575.016. TRANSFER FROM FACILITY OF THE INSTITUTIONAL DIVISION OF THE TEXAS DEPARTMENT OF CRIMINAL JUSTICE
Sec. 575.017. TRANSFER OF RECORDS

CHAPTER 575. ADMISSION AND TRANSFER PROCEDURES FOR INPATIENT SERVICES

SUBCHAPTER A. ADMISSION PROCEDURES

Sec. 575.001. AUTHORIZATION FOR ADMISSION. (a) The facility administrator of an inpatient mental health facility may admit and detain a patient under the procedures prescribed by this subtitle.

(b) The facility administrator of an inpatient mental health facility operated by a community center or other entity the department designates to provide mental health services may not admit or detain a patient under an order for temporary or extended court-ordered mental health services unless the facility is licensed under Chapter 577.

Sec. 575.002. ADMISSION OF VOLUNTARY PATIENT TO PRIVATE MENTAL HOSPITAL. This subtitle does not prohibit the voluntary admission of a patient to a private mental hospital in any lawful manner.

Sec. 575.003. ADMISSION OF ALCOHOLICS AND PERSONS CHARGED WITH CRIMINAL OFFENSE. This subtitle does not affect the admission to a state mental health facility of:

- (1) an alcoholic admitted under Chapter 462; or
- (2) a person charged with a criminal offense admitted under Section 5, Article 46.02, Code of Criminal Procedure.

[Sections 575.004–575.010 reserved for expansion]

SUBCHAPTER B. TRANSFER PROCEDURES

Sec. 575.011. TRANSFER TO STATE MENTAL HOSPITAL OR SINGLE PORTAL AUTHORITY. (a) The department may transfer a patient, if the transfer is considered advisable, from a state mental hospital to:

- (1) another state mental hospital; or
- (2) a facility of a single portal authority if the authority consents.

(b) A single portal authority may transfer a patient from one authority facility to another if the transfer is considered advisable.

(c) A voluntary patient may not be transferred under Subsection (a) or (b) without the patient's consent.

(d) The facility administrator of an inpatient mental health facility may, for any reason, transfer an involuntary patient to:

- (1) a facility of a single portal authority for the area; or
- (2) a state mental hospital designated by the department if there is no designated single portal authority for the area.

(e) The facility administrator shall notify the committing court and the single portal authority or department, as appropriate, before transferring a patient under Subsection (d).

Sec. 575.012. TRANSFER OF PERSON WITH MENTAL RETARDATION TO STATE HOSPITAL. (a) An inpatient mental health facility may not transfer a patient who is also a person with mental retardation to a department mental health facility unless, before initiating the transfer, the facility administrator of the inpatient mental health facility obtains from the commissioner a determination that space is available in a department facility unit that is specifically designed to serve such a person.

(b) The department shall maintain an appropriate number of hospital-level beds for persons with mental retardation who are committed for court-ordered mental health services to meet the needs of the single portal authorities. The number of beds the department maintains must be determined according to the previous year's need.

Sec. 575.013. TRANSFER OF PERSON WITH MENTAL RETARDATION TO STATE SCHOOL. (a) The hospital administrator of a state mental hospital may transfer an involuntary patient in the hospital to a state school for persons with mental retardation if an examination of the patient indicates that the patient has symptoms of mental retardation to the extent that training, education, rehabilitation, care, treatment, and supervision in a state school are in the patient's best interest.

(b) A certificate containing the diagnosis and the hospital administrator's recommendation of transfer to a specific state school shall be furnished to the committing court.

(c) The patient may not be transferred before the judge of the committing court enters an order approving the transfer.

Sec. 575.014. TRANSFER TO PRIVATE MENTAL HOSPITAL. The hospital administrator of a private mental hospital may transfer a patient to another private mental hospital, or the department may transfer a patient to a private mental hospital, at no expense to the state if:

(1) the patient or the patient's guardian or next friend signs an application requesting the transfer at the patient's or applicant's expense;

(2) the hospital administrator of the private mental hospital to which the person is to be transferred agrees in writing to admit the patient and to accept responsibility for the patient as prescribed by this subtitle; and

(3) written notice of the transfer is sent to the committing court.

Sec. 575.015. TRANSFER TO FEDERAL FACILITY. The department or the hospital administrator of a private mental hospital may transfer an involuntary patient to a federal agency if:

(1) the federal agency sends notice that facilities are available and that the patient is eligible for care or treatment in a facility;

(2) notice of the transfer is sent to the committing court; and

(3) the committing court enters an order approving the transfer.

Sec. 575.016. TRANSFER FROM FACILITY OF THE INSTITUTIONAL DIVISION OF THE TEXAS DEPARTMENT OF CRIMINAL JUSTICE. (a) The institutional division of the Texas Department of Criminal Justice shall transfer a patient committed to an institutional division inpatient mental health facility under Section 574.044 to a noncorrectional mental health facility on the day the inmate is released on parole or mandatory supervision.

(b) A patient transferred to a department mental health facility shall be transferred as prescribed by Section 575.011 or 575.012 to the facility that serves the location to which the patient is released on parole or mandatory supervision.

(c) The mental health facility to which a patient is transferred under this section is solely responsible for the patient's treatment.

Sec. 575.017. TRANSFER OF RECORDS. The facility administrator of the transferring inpatient mental health facility shall send the patient's appropriate hospital records,

or a copy of the records, to the hospital or facility administrator of the mental hospital or state school to which the patient is transferred.

CHAPTER 576. RIGHTS OF PATIENTS**SUBCHAPTER A. GENERAL RIGHTS**

- Sec. 576.001. RIGHTS UNDER CONSTITUTION AND LAW
- Sec. 576.002. PRESUMPTION OF COMPETENCY
- Sec. 576.003. WRIT OF HABEAS CORPUS
- Sec. 576.004. EFFECT ON GUARDIANSHIP
- Sec. 576.005. CONFIDENTIALITY OF RECORDS
- Sec. 576.006. RIGHTS SUBJECT TO LIMITATION BY FACILITY ADMINISTRATOR
- Sec. 576.007. NOTIFICATION OF RELEASE
- Sec. 576.008. NOTIFICATION OF PROTECTION AND ADVOCACY SYSTEM
- Sec. 576.009. NOTIFICATION OF RIGHTS

[Sections 576.010–576.020 reserved for expansion]

SUBCHAPTER B. RIGHTS RELATING TO TREATMENT

- Sec. 576.021. GENERAL RIGHTS RELATING TO TREATMENT
- Sec. 576.022. ADEQUACY OF TREATMENT
- Sec. 576.023. PERIODIC EXAMINATION
- Sec. 576.024. USE OF PHYSICAL RESTRAINT

CHAPTER 576. RIGHTS OF PATIENTS**SUBCHAPTER A. GENERAL RIGHTS**

Sec. 576.001. RIGHTS UNDER CONSTITUTION AND LAW. (a) A person with mental illness in this state has the rights, benefits, responsibilities, and privileges guaranteed by the constitution and laws of the United States and this state.

(b) Unless a specific law limits a right under a special procedure, a patient has:

- (1) the right to register and vote at an election;
- (2) the right to acquire, use, and dispose of property, including contractual rights;
- (3) the right to sue and be sued;
- (4) all rights relating to the grant, use, and revocation of a license, permit, privilege, or benefit under law;
- (5) the right to religious freedom; and
- (6) all rights relating to domestic relations.

Sec. 576.002. PRESUMPTION OF COMPETENCY. (a) The provision of court-ordered, emergency, or voluntary mental health services to a person is not a determination or adjudication of mental incompetency and does not limit the person's rights as a citizen, or the person's property rights or legal capacity.

(b) A person is presumed to be mentally competent unless a judicial finding to the contrary is made under the Texas Probate Code.

Sec. 576.003. WRIT OF HABEAS CORPUS. This subtitle does not limit a person's right to obtain a writ of habeas corpus.

Sec. 576.004. EFFECT ON GUARDIANSHIP. This subtitle, or an action taken or a determination made under this subtitle, does not affect a guardianship established under law.

Sec. 576.005. **CONFIDENTIALITY OF RECORDS.** Records of a mental health facility that directly or indirectly identify a present, former, or proposed patient are confidential unless disclosure is permitted by other state law.

Sec. 576.006. **RIGHTS SUBJECT TO LIMITATION BY FACILITY ADMINISTRATOR.** (a) A patient in an inpatient mental health facility has the right to:

- (1) receive visitors;
- (2) communicate with a person outside the facility; and
- (3) communicate by uncensored and sealed mail with legal counsel, the department, the courts, and the state attorney general.

(b) The rights provided in Subsection (a) are subject to the general rules of the facility. The facility administrator may also restrict a right to the extent the facility administrator determines that the restriction is necessary to the patient's welfare but may not restrict the right to communicate with legal counsel if an attorney-client relationship has been established.

(c) A restriction imposed by the facility administrator for the patient's welfare and the reasons for the restriction shall be made a part of the patient's clinical record.

Sec. 576.007. **NOTIFICATION OF RELEASE.** (a) The department or facility shall make a reasonable effort to notify an adult patient's family before the patient is discharged or released from a facility providing voluntary or involuntary mental health services if the patient grants permission for the notification.

(b) The department shall notify each adult patient of the patient's right to have his family notified under this section.

Sec. 576.008. **NOTIFICATION OF PROTECTION AND ADVOCACY SYSTEM.** A patient shall be informed in writing, at the time of admission or discharge, of the existence, purpose, telephone number, and address of the protection and advocacy system established in this state under the federal Protection and Advocacy for Mentally Ill Individuals Act of 1986 (42 U.S.C. Sec. 10801, et seq.).

Sec. 576.009. **NOTIFICATION OF RIGHTS.** A patient receiving involuntary inpatient mental health services shall be informed of the rights provided in Sections 576.001, 576.006, 576.007, 576.008, and 576.021:

- (1) orally, in simple, nontechnical terms, and in writing that, if possible, is in the person's primary language; or
- (2) through the use of a means reasonably calculated to communicate with a hearing impaired or visually impaired person, if applicable.

[Sections 576.010–576.020 reserved for expansion]

SUBCHAPTER B. RIGHTS RELATING TO TREATMENT

Sec. 576.021. **GENERAL RIGHTS RELATING TO TREATMENT.** A patient receiving mental health services under this subtitle has the right to:

- (1) appropriate treatment for the patient's mental illness in the least restrictive appropriate setting available;
- (2) not receive unnecessary or excessive medication;
- (3) refuse to participate in a research program;
- (4) an individualized treatment plan and to participate in developing the plan; and
- (5) a humane treatment environment that provides reasonable protection from harm and appropriate privacy for personal needs.

Sec. 576.022. **ADEQUACY OF TREATMENT.** (a) The facility administrator of an inpatient mental health facility shall provide adequate medical and psychiatric care and treatment to every patient in accordance with the highest standards accepted in medical practice.

(b) The facility administrator of an inpatient mental health facility may give the patient accepted psychiatric treatment and therapy.

Sec. 576.023. PERIODIC EXAMINATION. The facility administrator is responsible for the examination of each patient of the facility at least once every six months and more frequently as practicable.

Sec. 576.024. USE OF PHYSICAL RESTRAINT. (a) A physical restraint may not be applied to a patient unless a physician prescribes the restraint.

(b) A physical restraint shall be removed as soon as possible.

(c) Each use of a physical restraint and the reason for the use shall be made a part of the patient's clinical record. The physician who prescribed the restraint shall sign the record.

CHAPTER 577. PRIVATE MENTAL HOSPITALS AND OTHER MENTAL HEALTH FACILITIES

Sec. 577.001. LICENSE REQUIRED

Sec. 577.002. EXEMPTIONS FROM LICENSING REQUIREMENT

Sec. 577.003. ADDITIONAL LICENSE NOT REQUIRED

Sec. 577.004. LICENSE APPLICATION

Sec. 577.005. INVESTIGATION AND LICENSE ISSUANCE

Sec. 577.006. FEES

Sec. 577.007. CHANGE IN BED CAPACITY

Sec. 577.008. REQUIREMENT OF PHYSICIAN IN CHARGE

Sec. 577.009. LIMITATION ON CERTAIN CONTRACTS

Sec. 577.010. RULES AND STANDARDS

Sec. 577.011. RECORDS AND REPORTS

Sec. 577.012. DESTRUCTION OF RECORDS

Sec. 577.013. INVESTIGATIONS

Sec. 577.014. OATHS

Sec. 577.015. SUBPOENAS

Sec. 577.016. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE

Sec. 577.017. HEARINGS

Sec. 577.018. JUDICIAL REVIEW OF DEPARTMENT DECISION

Sec. 577.019. INJUNCTION

CHAPTER 577. PRIVATE MENTAL HOSPITALS AND OTHER MENTAL HEALTH FACILITIES

Sec. 577.001. LICENSE REQUIRED. (a) A person or political subdivision may not operate a mental hospital without a license issued by the department under this chapter or by the Texas Department of Health.

(b) A community center or other entity designated by the department to provide mental health services may not operate a mental health facility that provides court-ordered mental health services without a license issued by the department under this chapter or by the Texas Department of Health.

Sec. 577.002. EXEMPTIONS FROM LICENSING REQUIREMENT. A mental health facility operated by the department or a federal agency need not be licensed under this chapter.

Sec. 577.003. ADDITIONAL LICENSE NOT REQUIRED. A mental hospital licensed under this chapter that the department designates to provide mental health services is not required to obtain an additional license to provide court-ordered mental health services.

Sec. 577.004. LICENSE APPLICATION. (a) An applicant for a license under this chapter must submit a sworn application to the department on a form prescribed by the department.

(b) The department shall prepare the application form and make the form available on request.

(c) The application must be accompanied by a nonrefundable application fee and by a license fee. The department shall return the license fee if the application is denied.

(d) The application must contain:

(1) the name and location of the mental hospital or mental health facility;

(2) the name and address of the physician to be in charge of the hospital care and treatment of the patients;

(3) the names and addresses of the mental hospital owners, including the officers, directors, and principal stockholders if the owner is a corporation or other association, or the names and addresses of the members of the board of trustees of the community center or the directors of the entity designated by the department to provide mental health services;

(4) the bed capacity to be authorized by the license;

(5) the number, duties, and qualifications of the professional staff;

(6) a description of the equipment and facilities of the mental hospital or mental health facility; and

(7) other information required by the department, including affirmative evidence of ability to comply with the department's rules and standards.

(e) The applicant must submit a plan of the mental hospital or mental health facility premises that describes the buildings and grounds and the manner in which the various parts of the premises are intended to be used.

Sec. 577.005. INVESTIGATION AND LICENSE ISSUANCE. (a) The department shall conduct an investigation as considered necessary after receiving the proper license application and the required fees.

(b) The department shall issue a license if it finds that the premises are suitable and that the applicant is qualified to operate a mental hospital or a mental health facility that provides court-ordered inpatient mental health services, in accordance with the requirements and standards prescribed by law and the department.

(c) A license is issued to the applicant for the premises described and for the bed capacity specified by the license.

(d) The license is not transferable or assignable.

Sec. 577.006. FEES. (a) The board by rule shall adopt:

(1) an application fee;

(2) a license fee;

(3) a fee schedule for reviewing the plan of the hospital or facility premises; and

(4) a fee schedule for field surveys of construction plans.

(b) The department may establish staggered license renewal dates and dates on which fees are due.

(c) A fee adopted under this chapter must be based on the estimated cost to and the level of effort expended by the department to conduct the activity for which the fee is imposed.

(d) The fees should be designed to recover all of the department's cost in granting the initial license and in renewing the license, but may not exceed \$250.

(e) The fee for a plan review or field survey may not exceed \$650.

(f) The department annually shall review the fee schedules to ensure that the fees charged are based on the estimated costs to and level of effort expended by the department.

(g) Fees collected under this chapter shall be deposited in the state treasury in a separate fund and may be appropriated for salaries, maintenance, travel expenses, repairs, printing, postage, and other uses and purposes prescribed by this subtitle.

Sec. 577.007. CHANGE IN BED CAPACITY. A mental hospital or mental health facility may increase the bed capacity authorized by the license at any time with the department's approval and may decrease the capacity at any time by notifying the department.

Sec. 577.008. REQUIREMENT OF PHYSICIAN IN CHARGE. Each licensed private mental hospital shall be in the charge of a physician who has at least three years experience as a physician in psychiatry in a mental hospital or who is certified by the American Board of Psychiatry and Neurology or by the American Osteopathic Board of Psychiatry and Neurology.

Sec. 577.009. LIMITATION ON CERTAIN CONTRACTS. A community center or other entity the department designates to provide mental health services may not contract with a mental health facility to provide court-ordered mental health services unless the facility is licensed by the department or the Texas Department of Health.

Sec. 577.010. RULES AND STANDARDS. (a) The board shall adopt rules and standards the board considers necessary and appropriate to ensure the proper care and treatment of patients in a private mental hospital or mental health facility required to obtain a license under this chapter.

(b) The rules must encourage mental health facilities licensed under this chapter to provide inpatient mental health services in ways that are appropriate for the diversity of the state.

(c) The standards for community-based crisis stabilization and crisis residential services must be less restrictive than the standards for mental hospitals.

(d) The department shall send a copy of the rules to each mental hospital or mental health facility licensed under this chapter.

Sec. 577.011. RECORDS AND REPORTS. The department may require a license holder to make annual, periodical, or special reports to the department and to keep the records the department considers necessary to ensure compliance with this subtitle and the department's rules and standards.

Sec. 577.012. DESTRUCTION OF RECORDS. (a) A private mental hospital licensed under this chapter may authorize the disposal of any medical record on or after the 10th anniversary of the date on which the patient who is the subject of the record was last treated in the hospital.

(b) If a patient was younger than 18 years of age when last treated, the hospital may authorize the disposal of records relating to the patient on or after the later of the patient's 20th birthday or the 10th anniversary of the date on which the patient was last treated.

(c) The hospital may not destroy medical records that relate to any matter that is involved in litigation if the hospital knows that the litigation has not been finally resolved.

Sec. 577.013. INVESTIGATIONS. (a) The department may make investigations it considers necessary and proper to obtain compliance with this subtitle and the department's rules and standards.

(b) An agent of the department may at any reasonable time enter the premises of a private mental hospital or mental health facility licensed under this chapter to:

- (1) inspect the facilities and conditions;
- (2) observe the hospital's or facility's care and treatment program; and
- (3) question the employees of the hospital or facility.

(c) An agent of the department may examine or transcribe any records or documents relevant to the investigation.

Sec. 577.014. OATHS. The department or its agent may administer oaths, receive evidence, and examine witnesses in conducting an investigation or other proceeding under this chapter.

Sec. 577.015. SUBPOENAS. (a) The department or its agent, in conducting an investigation or other proceeding under this chapter, may issue subpoenas to compel the

attendance and testimony of witnesses and the production of documents or records anywhere in this state that are related to the matter under inquiry.

(b) If a person refuses to obey a subpoena, the department may apply to the district court of Travis County for an order requiring obedience to the subpoena.

Sec. 577.016. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE. (a) The department may deny, suspend, or revoke a license if the department finds that the applicant or licensee has substantially failed to comply with:

- (1) department rules;
- (2) this subtitle; or
- (3) Chapters 104 and 225.

(b) The department must give the applicant or license holder notice of the proposed action, an opportunity to demonstrate or achieve compliance, and an opportunity for a hearing before taking the action.

(c) The department may suspend a license for 10 days pending a hearing if after an investigation the department finds that there is an immediate threat to the health or safety of the patients or employees of a private mental hospital or mental health facility licensed under this chapter. The department may issue necessary orders for the patients' welfare.

(d) The department shall send the license holder or applicant a copy of the department's decision by registered mail. If the department denies, suspends, or revokes a license, the department shall include the findings and conclusions on which the department based its decision.

Sec. 577.017. HEARINGS. (a) The department's legal staff may participate in a hearing under this chapter.

(b) The hearing proceedings shall be recorded in a form that can be transcribed if notice of appeal is filed.

Sec. 577.018. JUDICIAL REVIEW OF DEPARTMENT DECISION. (a) An applicant or license holder may appeal from a department decision by filing notice of appeal in the district court of Travis County and with the department not later than the 30th day after receiving a copy of the department's decision.

(b) The department shall certify and file with the court a transcript of the case proceedings on receiving notice of appeal. The transcript may be limited by stipulation.

(c) The court shall hear the case on the record and may consider other evidence the court determines necessary to determine properly the issues involved. The substantial evidence rule does not apply.

(d) The court may affirm or set aside the department decision or may remand the case to the department for further proceedings.

(e) The department shall pay the cost of the appeal unless the court affirms the department's decision, in which case the applicant or license holder shall pay the cost of the appeal.

Sec. 577.019. INJUNCTION. (a) The department, in the name of the state, may maintain an action in a district court of Travis County for an injunction or other process against any person to restrain the person from operating a mental hospital or mental health facility that is not licensed as required by this chapter.

(b) The district court of Travis County, for cause shown, may restrain a violation of this chapter.

SUBTITLE D. PERSONS WITH MENTAL RETARDATION ACT

CHAPTER 591. GENERAL PROVISIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 591.001. SHORT TITLE
Sec. 591.002. PURPOSE
Sec. 591.003. DEFINITIONS
Sec. 591.004. RULES
Sec. 591.005. LEAST RESTRICTIVE ALTERNATIVE
Sec. 591.006. CONSENT

[Sections 591.007–591.010 reserved for expansion]

SUBCHAPTER B. DUTIES OF DEPARTMENT

Sec. 591.011. DEPARTMENT RESPONSIBILITIES
Sec. 591.012. COOPERATION WITH OTHER AGENCIES
Sec. 591.013. LONG-RANGE PLAN

[Sections 591.014–591.020 reserved for expansion]

SUBCHAPTER C. PENALTIES AND REMEDIES

Sec. 591.021. CRIMINAL PENALTY
Sec. 591.022. CIVIL PENALTY
Sec. 591.023. INJUNCTIVE RELIEF; CIVIL PENALTY
Sec. 591.024. CIVIL ACTION AGAINST DEPARTMENT EMPLOYEE
Sec. 591.025. LIABILITY

SUBTITLE D. PERSONS WITH MENTAL RETARDATION ACT

CHAPTER 591. GENERAL PROVISIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 591.001. SHORT TITLE. This subtitle may be cited as the Persons with Mental Retardation Act.

Sec. 591.002. PURPOSE. (a) It is the public policy of this state that persons with mental retardation have the opportunity to develop to the fullest extent possible their potential for becoming productive members of society.

(b) It is the purpose of this subtitle to provide and assure a continuum of quality services to meet the needs of all persons with mental retardation in this state.

(c) The state's responsibility to persons with mental retardation does not replace or impede parental rights and responsibilities or terminate the activities of persons, groups, or associations that advocate for and assist persons with mental retardation.

(d) It is desirable to preserve and promote living at home if feasible. If living at home is not possible and placement in a residential facility for persons with mental retardation is necessary, a person must be admitted in accordance with basic due process requirements, giving appropriate consideration to parental desires if possible. The person must be admitted to a facility that provides habilitative training for the person's condition, that fosters the personal development of the person, and that enhances the person's ability to cope with the environment.

(e) Because persons with mental retardation have been denied rights solely because of their retardation, the general public should be educated to the fact that persons with

mental retardation who have not been adjudicated incompetent and for whom a guardian has not been appointed by a due process proceeding in a court have the same rights and responsibilities enjoyed by all citizens of this state. All citizens are urged to assist persons with mental retardation in acquiring and maintaining rights and in participating in community life as fully as possible.

Sec. 591.003. DEFINITIONS. In this subtitle:

(1) "Adaptive behavior" means the effectiveness with or degree to which a person meets the standards of personal independence and social responsibility expected of the person's age and cultural group.

(2) "Board" means the Texas Board of Mental Health and Mental Retardation.

(3) "Care" means the life support and maintenance services or other aid provided to a person with mental retardation, including dental, medical, and nursing care and similar services.

(4) "Client" means a person receiving mental retardation services from the department or a community center.

(5) "Commissioner" means the commissioner of mental health and mental retardation.

(6) "Community center" means an entity organized under Subchapter A, Chapter 534, that provides mental retardation services.

(7) "Department" means the Texas Department of Mental Health and Mental Retardation.

(8) "Diagnosis and evaluation team" means a group of persons with special training and experience in the diagnosis, management, and needs of persons with mental retardation and that performs a comprehensive diagnosis and evaluation.

(9) "Director" means the director of a community center.

(10) "Group home" means a residential arrangement, other than a residential care facility, operated by the department or a community center in which not more than 15 persons with mental retardation voluntarily live and under appropriate supervision may share responsibilities for operation of the living unit.

(11) "Guardian" means the person who, under court order, is the guardian of the person of another or of the estate of another.

(12) "Habilitation" means the process, including programs of formal structured education and training, by which a person is assisted in acquiring and maintaining life skills that enable the person to cope more effectively with the person's personal and environmental demands and to raise the person's physical, mental, and social efficiency.

(13) "Mental retardation" means significantly subaverage general intellectual functioning that is concurrent with deficits in adaptive behavior and originates during the developmental period.

(14) "Mental retardation services" means programs and assistance for persons with mental retardation that may include diagnosis and evaluation, education, special training, supervision, care, treatment, rehabilitation, residential care, and counseling, but does not include those services or programs that have been explicitly delegated by law to other state agencies.

(15) "Minor" means a person younger than 18 years of age who:

(A) is not and has not been married; or

(B) has not had the person's disabilities of minority removed for general purposes.

(16) "Person with mental retardation" means a person determined by a comprehensive diagnosis and evaluation to have subaverage general intellectual functioning with deficits in adaptive behavior.

(17) "Resident" means a person living in and receiving services from a residential care facility.

(18) "Residential care facility" means a facility operated by the department or a community center that provides 24-hour services, including domiciliary services, direct-

ed toward enhancing the health, welfare, and development of persons with mental retardation.

(19) "Service provider" means a person who provides mental retardation services.

(20) "Subaverage general intellectual functioning" refers to measured intelligence on standardized psychometric instruments of two or more standard deviations below the age-group mean for the tests used.

(21) "Superintendent" means the individual in charge of a residential care facility.

(22) "Training" means the process by which a person with mental retardation is habilitated and may include the teaching of life and work skills.

(23) "Treatment" means the process by which a service provider attempts to ameliorate the condition of a person with mental retardation.

Sec. 591.004. RULES. The board by rule shall ensure the implementation of this subtitle.

Sec. 591.005. LEAST RESTRICTIVE ALTERNATIVE. The least restrictive alternative is:

(1) the available program or facility that is the least confining for a client's condition; and

(2) the service and treatment that is provided in the least intrusive manner reasonably and humanely appropriate to the person's needs.

Sec. 591.006. CONSENT. (a) Consent given by a person is legally adequate if the person:

(1) is not a minor and has not been adjudicated incompetent to manage the person's personal affairs by an appropriate court of law;

(2) understands the information; and

(3) consents voluntarily, free from coercion or undue influence.

(b) The person giving the consent must be informed of and understand:

(1) the nature, purpose, consequences, risks, and benefits of and alternatives to the procedure;

(2) that the withdrawal or refusal of consent will not prejudice the future provision of care and services; and

(3) the method used in the proposed procedure if the person is to receive unusual or hazardous treatment procedures, experimental research, organ transplantation, or nontherapeutic surgery.

[Sections 591.007–591.010 reserved for expansion]

SUBCHAPTER B. DUTIES OF DEPARTMENT

Sec. 591.011. DEPARTMENT RESPONSIBILITIES. (a) The department shall make all reasonable efforts consistent with available resources to:

(1) assure that each identified person with mental retardation who needs mental retardation services is given while these services are needed quality care, treatment, education, training, and rehabilitation appropriate to the person's individual needs other than those services or programs explicitly delegated by law to other governmental agencies;

(2) initiate, carry out, and evaluate procedures to guarantee to persons with mental retardation the rights listed in this subtitle;

(3) carry out this subtitle, including planning, initiating, coordinating, promoting, and evaluating all programs developed;

(4) provide either directly or by cooperation, negotiation, or contract with other agencies and those persons and groups listed in Section 533.034, a continuum of services to persons with mental retardation; and

(5) provide, either directly or by contract with other agencies, a continuum of services to children, juveniles, or adults with mental retardation committed into the department's custody by the juvenile or criminal courts.

(b) The services provided by the department under Subsection (a)(4) shall include:

(1) treatment and care;

(2) education and training, including sheltered workshop programs;

(3) counseling and guidance; and

(4) development of residential and other facilities to enable persons with mental retardation to live and be habilitated in the community.

(c) The facilities provided under Subsection (b) shall include group homes, foster homes, halfway houses, and day-care facilities for persons with mental retardation to which the department has assigned persons with mental retardation.

(d) The department shall exercise periodic and continuing supervision over the quality of services provided under this section.

(e) The department's responsibilities under this subtitle are in addition to all other responsibilities and duties of the department under other law.

Sec. 591.012. COOPERATION WITH OTHER AGENCIES. Each agency authorized to provide education, support, related services, rehabilitation, and other services shall cooperate with the department under this subtitle to the extent cooperation is consistent with the agency's functions and authority.

Sec. 591.013. LONG-RANGE PLAN. (a) The department and the Texas Department of Human Services shall jointly develop a long-range plan for services to persons with developmental disabilities, including mental retardation.

(b) The commissioner of each department shall appoint the necessary staff to develop the plan through research of appropriate topics and public hearings to obtain testimony from persons with knowledge of or interest in state services to persons with developmental disabilities, including mental retardation.

(c) In developing the plan, the department shall consider existing plans or studies made by the departments.

(d) The plan must address at least the following topics:

(1) the needs of persons with developmental disabilities, including mental retardation;

(2) how state services should be structured to meet those needs;

(3) how the ICF-MR program, the waiver program under Section 1915(c), federal Social Security Act, other programs under Title XIX, federal Social Security Act, and other federally funded programs can best be structured and financed to assist the state in delivering services to persons with developmental disabilities, including mental retardation;

(4) the statutory limits and rule or policy changes necessary to ensure the controlled growth of the programs under Title XIX, federal Social Security Act and other federally funded programs;

(5) methods for expanding services available through the ICF-MR program to persons with related conditions as defined by federal regulations relating to the medical assistance program; and

(6) the cost of implementing the plan.

(e) The departments shall, if necessary, modify their respective long-range plans and other existing plans relating to the provision of services to persons with developmental disabilities, including mental retardation, to incorporate the provisions of the joint plan.

(f) The departments shall review and revise the plan biennially. Each department shall consider the most recent revision of the plan in any modifications of that department's long-range plans and in each future budget request.

(g) This section does not affect the authority of the department and the Texas Department of Human Services to carry out their separate functions as established by state and federal law.

(h) In this section, "ICF-MR program" means the medical assistance program serving persons with mental retardation who receive care in intermediate care facilities.

[Sections 591.014–591.020 reserved for expansion]

SUBCHAPTER C. PENALTIES AND REMEDIES

Sec. 591.021. CRIMINAL PENALTY. (a) A person commits an offense if the person intentionally or knowingly causes, conspires with another to cause, or assists another to cause the unlawful continued detention in or unlawful admission or commitment of a person to a facility specified in this subtitle with the intention of harming that person.

(b) An offense under this section is a Class B misdemeanor.

(c) The district and county attorney within their respective jurisdictions shall prosecute a violation of this section.

Sec. 591.022. CIVIL PENALTY. (a) A person who intentionally violates the rights guaranteed by this subtitle to a person with mental retardation is liable to the person injured by the violation in an amount of not less than \$100 or more than \$5,000.

(b) A person who recklessly violates the rights guaranteed by this subtitle to a person with mental retardation is liable to the person injured by the violation in an amount of not less than \$100 or more than \$1,000.

(c) A person who intentionally releases confidential information or records of a person with mental retardation in violation of law is liable to the person injured by the unlawful disclosure for \$1,000 or three times the actual damages, whichever is greater.

(d) A cause of action under this section may be filed by:

- (1) the injured person;
- (2) the injured person's parent, if the person is a minor;
- (3) a guardian, if the person has been adjudicated incompetent; or
- (4) the injured person's next friend in accordance with Rule 44, Texas Rules of Civil Procedure.

(e) The cause of action may be filed in a district court in Travis County or in the county in which the defendant resides.

(f) This section does not supersede or abrogate other remedies existing in law.

Sec. 591.023. INJUNCTIVE RELIEF; CIVIL PENALTY. (a) A district court, in an action brought in the name of the state by the state attorney general or a district or county attorney within the attorney's respective jurisdiction, may issue a temporary restraining order, a temporary injunction, or a permanent injunction to:

- (1) restrain and prevent a person from violating this subtitle or a rule adopted by the department under this subtitle; or
- (2) enforce compliance with this subtitle or a rule adopted by the department under this subtitle.

(b) A person who violates the terms of an injunction issued under this section shall forfeit and pay to the state a civil penalty of not more than \$5,000 for each violation, but not to exceed a total of \$20,000.

(c) In determining whether an injunction has been violated, the court shall consider the maintenance of procedures adopted to ensure compliance with the injunction.

(d) The state attorney general or the district or county attorney, acting in the name of the state, may petition the court issuing the injunction for recovery of civil penalties under this section.

(e) A civil penalty recovered under this section shall be paid to the state for use in mental retardation services.

(f) An action filed under this section may be brought in a district court in Travis County or in the county in which the defendant resides.

(g) This section does not supersede or abrogate other remedies existing at law.

Sec. 591.024. CIVIL ACTION AGAINST DEPARTMENT EMPLOYEE. (a) The state attorney general shall provide legal counsel to represent a department employee in a civil action brought against the person under this subtitle for a claim of alleged negligence or other act of the person while employed by the department. The person shall cooperate fully with the state attorney general in the defense of the claim, demand, or suit.

(b) The state shall hold harmless and indemnify the person against financial loss arising out of a claim, demand, suit, or judgment by reason of the negligence or other act by the person, if:

(1) at the time the claim arose or damages were sustained, the person was acting in the scope of the person's authorized duties; and

(2) the claim or cause of action or damages sustained did not result from an intentional and wrongful act or the person's reckless conduct.

(c) To be eligible for assistance under this section, the person must deliver to the department the original or a copy of the summons, complaint, process, notice, demand, or pleading not later than the 10th day after the date on which the person is served with the document. The state attorney general may assume control of the person's representation on delivery of the document or a copy of the document to the department.

(d) This section does not impair, limit, or modify rights and obligations existing under an insurance policy.

(e) This section applies only to a person named in this section and does not affect the rights of any other person.

Sec. 591.025. LIABILITY. An officer or employee of the department or a community center, acting reasonably within the scope of the person's employment and in good faith, is not civilly or criminally liable under this subtitle.

CHAPTER 592. RIGHTS OF PERSONS WITH MENTAL RETARDATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 592.001. PURPOSE

Sec. 592.002. RULES

[Sections 592.003–592.010 reserved for expansion]

SUBCHAPTER B. BASIC BILL OF RIGHTS

Sec. 592.011. RIGHTS GUARANTEED

Sec. 592.012. PROTECTION FROM EXPLOITATION AND ABUSE

Sec. 592.013. LEAST RESTRICTIVE LIVING ENVIRONMENT

Sec. 592.014. EDUCATION

Sec. 592.015. EMPLOYMENT

Sec. 592.016. HOUSING

Sec. 592.017. TREATMENT AND SERVICES

Sec. 592.018. DIAGNOSIS AND EVALUATION

Sec. 592.019. ADMINISTRATIVE HEARING

Sec. 592.020. INDEPENDENT DIAGNOSIS AND EVALUATION

Sec. 592.021. ADDITIONAL RIGHTS

[Sections 592.022–592.030 reserved for expansion]

SUBCHAPTER C. RIGHTS OF CLIENTS

- Sec. 592.031. RIGHTS IN GENERAL**
- Sec. 592.032. LEAST RESTRICTIVE ALTERNATIVE**
- Sec. 592.033. INDIVIDUALIZED PLAN**
- Sec. 592.034. REVIEW AND REEVALUATION**
- Sec. 592.035. PARTICIPATION IN PLANNING**
- Sec. 592.036. WITHDRAWAL FROM VOLUNTARY SERVICES**
- Sec. 592.037. FREEDOM FROM MISTREATMENT**
- Sec. 592.038. FREEDOM FROM UNNECESSARY MEDICATION**
- Sec. 592.039. GRIEVANCES**
- Sec. 592.040. INFORMATION ABOUT RIGHTS**

[Sections 592.041–592.050 reserved for expansion]

SUBCHAPTER D. RIGHTS OF RESIDENTS

- Sec. 592.051. GENERAL RIGHTS OF RESIDENTS**
- Sec. 592.052. MEDICAL AND DENTAL CARE AND TREATMENT**
- Sec. 592.053. STANDARDS OF CARE**
- Sec. 592.054. DUTIES OF SUPERINTENDENT OR DIRECTOR**
- Sec. 592.055. UNUSUAL OR HAZARDOUS TREATMENT**

CHAPTER 592. RIGHTS OF PERSONS WITH MENTAL RETARDATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 592.001. PURPOSE. The purpose of this chapter is to recognize and protect the individual dignity and worth of each person with mental retardation.

Sec. 592.002. RULES. The board by rule shall ensure the implementation of the rights guaranteed in this chapter.

[Sections 592.003–592.010 reserved for expansion]

SUBCHAPTER B. BASIC BILL OF RIGHTS

Sec. 592.011. RIGHTS GUARANTEED. (a) Each person with mental retardation in this state has the rights, benefits, and privileges guaranteed by the constitution and laws of the United States and this state.

(b) The rights specifically listed in this subtitle are in addition to all other rights that persons with mental retardation have and are not exclusive or intended to limit the rights guaranteed by the constitution and laws of the United States and this state.

Sec. 592.012. PROTECTION FROM EXPLOITATION AND ABUSE. Each person with mental retardation has the right to protection from exploitation and abuse because of the person's mental retardation.

Sec. 592.013. LEAST RESTRICTIVE LIVING ENVIRONMENT. Each person with mental retardation has the right to live in the least restrictive setting appropriate to the person's individual needs and abilities and in a variety of living situations, including living:

- (1) alone;
- (2) in a group home;
- (3) with a family; or
- (4) in a supervised, protective environment.

Sec. 592.014. EDUCATION. Each person with mental retardation has the right to receive publicly supported educational services, including those services provided under

the Education Code, that are appropriate to the person's individual needs regardless of the person's:

- (1) chronological age;
- (2) degree of retardation;
- (3) accompanying disabilities or handicaps; or
- (4) admission or commitment to mental retardation services.

Sec. 592.015. **EMPLOYMENT.** An employer, employment agency, or labor organization may not deny a person equal opportunities in employment because of the person's mental retardation, unless:

- (1) the person's mental retardation significantly impairs the person's ability to perform the duties and tasks of the position for which the person has applied; or
- (2) the denial is based on a bona fide occupational qualification reasonably necessary to the normal operation of the particular business or enterprise.

Sec. 592.016. **HOUSING.** An owner, lessee, sublessee, assignee, or managing agent or other person having the right to sell, rent, or lease real property, or an agent or employee of any of these, may not refuse to sell, rent, or lease to any person or group of persons solely because the person is a person with mental retardation or a group that includes one or more persons with mental retardation.

Sec. 592.017. **TREATMENT AND SERVICES.** Each person with mental retardation has the right to receive for mental retardation adequate treatment and habilitative services that:

- (1) are suited to the person's individual needs;
- (2) maximize the person's capabilities;
- (3) enhance the person's ability to cope with the person's environment; and
- (4) are administered skillfully, safely, and humanely with full respect for the dignity and personal integrity of the person.

Sec. 592.018. **DIAGNOSIS AND EVALUATION.** A person thought to be a person with mental retardation has the right promptly to receive a comprehensive diagnosis and evaluation adapted to that person's cultural background, language, and ethnic origin to determine if the person is in need of mental retardation services as provided by Subchapter A, Chapter 593.

Sec. 592.019. **ADMINISTRATIVE HEARING.** A person who files an application for a comprehensive diagnosis and evaluation has the right to request and promptly receive an administrative hearing under Subchapter A, Chapter 593, to contest the findings of the diagnosis and evaluation team and to determine eligibility for mental retardation services.

Sec. 592.020. **INDEPENDENT DIAGNOSIS AND EVALUATION.** A person on whom a comprehensive diagnosis and evaluation is performed or a person who files an application for a diagnosis and evaluation under Section 593.004 and who questions the validity or results of the comprehensive diagnosis and evaluation, has the right to an additional, independent diagnosis and evaluation performed at the person's own expense.

Sec. 592.021. **ADDITIONAL RIGHTS.** Each person with mental retardation has the right to:

- (1) presumption of competency;
- (2) due process in guardianship proceedings; and
- (3) fair compensation for the person's labor for the economic benefit of another, regardless of any direct or incidental therapeutic value to the person.

[Sections 592.022–592.030 reserved for expansion]

SUBCHAPTER C. RIGHTS OF CLIENTS

Sec. 592.031. **RIGHTS IN GENERAL.** (a) Each client has the same rights as other citizens of the United States and this state unless the client's rights have been lawfully restricted.

(b) Each client has the rights listed in this subchapter in addition to the rights guaranteed by Subchapter B.

Sec. 592.032. LEAST RESTRICTIVE ALTERNATIVE. Each client has the right to live in the least restrictive habilitation setting and to be treated and served in the least intrusive manner appropriate to the client's individual needs.

Sec. 592.033. INDIVIDUALIZED PLAN. (a) Each client has the right to a written, individualized habilitation plan developed by appropriate specialists and based on the relevant results of the comprehensive diagnosis and evaluation.

(b) The client, and the parent of a client who is a minor or the guardian of the person, shall participate in the development of the plan.

(c) The plan shall be implemented as soon as possible but not later than the 30th day after the date on which the client is admitted or committed to mental retardation services.

(d) The content of an individualized habilitation plan is as required by the department.

Sec. 592.034. REVIEW AND REEVALUATION. (a) Each client has the right to have the individualized habilitation plan reviewed at least:

- (1) once a year if the client is in a residential care facility; or
- (2) quarterly if the client has been admitted for other services.

(b) The purpose of the review is to:

- (1) measure progress;
- (2) modify objectives and programs if necessary; and
- (3) provide guidance and remediation techniques.

(c) Each client has the right to a periodic comprehensive rediagnosis and reevaluation.

Sec. 592.035. PARTICIPATION IN PLANNING. (a) Each client, and parent of a client who is a minor or the guardian of the person, have the right to:

- (1) participate in planning the client's treatment and habilitation; and
- (2) be informed in writing at reasonable intervals of the client's progress.

(b) If possible, the client, parent, or guardian of the person shall be given the opportunity to choose from several appropriate alternative services available to the client from a service provider.

Sec. 592.036. WITHDRAWAL FROM VOLUNTARY SERVICES. (a) Except as provided by Section 593.030, a client, the parent if the client is a minor, or a guardian of the person may withdraw the client from mental retardation services.

(b) This section does not apply to a person who was committed to a residential care facility as provided by Subchapter C, Chapter 593.

Sec. 592.037. FREEDOM FROM MISTREATMENT. Each client has the right not to be mistreated, neglected, or abused by a service provider.

Sec. 592.038. FREEDOM FROM UNNECESSARY MEDICATION. (a) Each client has the right to not receive unnecessary or excessive medication.

(b) Medication may not be used:

- (1) as punishment;
- (2) for the convenience of the staff;
- (3) as a substitute for a habilitation program; or
- (4) in quantities that interfere with the client's habilitation program.

(c) Medication for each client may be authorized only by prescription of a physician and a physician shall closely supervise its use.

Sec. 592.039. GRIEVANCES. A client, or a person acting on behalf of a person with mental retardation or a group of persons with mental retardation, has the right to submit complaints or grievances regarding the infringement of the rights of a person with mental retardation or the delivery of mental retardation services against a person, group of persons, organization, or business to the appropriate public responsibility committee for investigation and appropriate action.

Sec. 592.040. INFORMATION ABOUT RIGHTS. (a) On admission for mental retardation services, each client, and the parent if the client is a minor or the guardian of the person of the client, shall be given written notice of the rights guaranteed by this subtitle. The notice shall be in plain and simple language.

(b) Each client shall be orally informed of these rights in plain and simple language.

(c) Notice given solely to the parent or guardian of the person is sufficient if the client is manifestly unable to comprehend the rights.

[Sections 592.041–592.050 reserved for expansion]

SUBCHAPTER D. RIGHTS OF RESIDENTS

Sec. 592.051. GENERAL RIGHTS OF RESIDENTS. Each resident has the right to:

- (1) a normal residential environment;
- (2) a humane physical environment;
- (3) communication and visits; and
- (4) possess personal property.

Sec. 592.052. MEDICAL AND DENTAL CARE AND TREATMENT. Each resident has the right to prompt, adequate, and necessary medical and dental care and treatment for physical and mental ailments and to prevent an illness or disability.

Sec. 592.053. STANDARDS OF CARE. Medical and dental care and treatment shall be performed under the appropriate supervision of a licensed physician or dentist and shall be consistent with accepted standards of medical and dental practice in the community.

Sec. 592.054. DUTIES OF SUPERINTENDENT OR DIRECTOR. (a) Except as limited by this subtitle, the superintendent or director shall provide without further consent necessary care and treatment to each court-committed resident and make available necessary care and treatment to each voluntary resident.

(b) Notwithstanding Subsection (a), consent is required for all surgical procedures.

Sec. 592.055. UNUSUAL OR HAZARDOUS TREATMENT. This subtitle does not permit the department to perform unusual or hazardous treatment procedures, experimental research, organ transplantation, or nontherapeutic surgery for experimental research.

CHAPTER 593. ADMISSION AND COMMITMENT TO MENTAL RETARDATION SERVICES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 593.001. ADMISSION

Sec. 593.002. CONSENT REQUIRED

Sec. 593.003. REQUIREMENT OF DIAGNOSIS AND EVALUATION

Sec. 593.004. APPLICATION FOR DIAGNOSIS AND EVALUATION

Sec. 593.005. COMPREHENSIVE DIAGNOSIS AND EVALUATION

Sec. 593.006. REPORT

Sec. 593.007. NOTIFICATION OF CERTAIN RIGHTS

Sec. 593.008. ADMINISTRATIVE HEARING

Sec. 593.009. HEARING REPORT; FINAL DECISION

Sec. 593.010. APPEAL

Sec. 593.011. FEES FOR SERVICES

Sec. 593.012. ABSENT WITHOUT PERMISSION

[Sections 593.013–593.020 reserved for expansion]

**SUBCHAPTER B. APPLICATION AND ADMISSION TO VOLUNTARY
MENTAL RETARDATION SERVICES**

- Sec. 593.021. APPLICATION FOR VOLUNTARY SERVICES**
- Sec. 593.022. ADMISSION TO VOLUNTARY MENTAL RETARDATION SERVICES**
- Sec. 593.023. RULES RELATING TO PLANNING OF SERVICES OR TREATMENT**
- Sec. 593.024. APPLICATION FOR VOLUNTARY RESIDENTIAL CARE SERVICES**
- Sec. 593.025. PLACEMENT PREFERENCE**
- Sec. 593.026. REGULAR VOLUNTARY ADMISSION**
- Sec. 593.027. EMERGENCY ADMISSION**
- Sec. 593.028. RESPITE CARE**
- Sec. 593.029. TREATMENT OF MINOR WHO REACHES MAJORITY**
- Sec. 593.030. WITHDRAWAL FROM SERVICES**

[Sections 593.031–593.040 reserved for expansion]

SUBCHAPTER C. COMMITMENT TO RESIDENTIAL CARE FACILITY

- Sec. 593.041. APPLICATION FOR PLACEMENT; JURISDICTION**
- Sec. 593.042. FORM OF APPLICATION**
- Sec. 593.043. REPRESENTATION BY COUNSEL; APPOINTMENT OF ATTORNEY**
- Sec. 593.044. ORDER FOR PROTECTIVE CUSTODY**
- Sec. 593.045. DETENTION IN PROTECTIVE CUSTODY**
- Sec. 593.046. RELEASE FROM PROTECTIVE CUSTODY**
- Sec. 593.047. SETTING ON APPLICATION**
- Sec. 593.048. HEARING NOTICE**
- Sec. 593.049. HEARING BEFORE JURY; PROCEDURE**
- Sec. 593.050. CONDUCT OF HEARING**
- Sec. 593.051. DISMISSAL AFTER HEARING**
- Sec. 593.052. ORDER FOR COMMITMENT**
- Sec. 593.053. DECISION**
- Sec. 593.054. NOT A JUDGMENT OF INCOMPETENCE**
- Sec. 593.055. DESIGNATION OF FACILITY**
- Sec. 593.056. APPEAL**

[Sections 593.057–593.070 reserved for expansion]

SUBCHAPTER D. FEES

- Sec. 593.071. APPLICATION OF SUBCHAPTER**
- Sec. 593.072. INABILITY TO PAY**
- Sec. 593.073. DETERMINATION OF RESIDENTIAL COSTS**
- Sec. 593.074. MAXIMUM FEES**
- Sec. 593.075. SLIDING FEE SCHEDULE**
- Sec. 593.076. FEE SCHEDULE FOR DIVORCED PARENTS**
- Sec. 593.077. CHILD SUPPORT PAYMENTS FOR BENEFIT OF RESIDENT**
- Sec. 593.078. PAYMENT FOR ADULT RESIDENTS**
- Sec. 593.079. PREVIOUS FEE AGREEMENTS**
- Sec. 593.080. STATE CLAIMS FOR UNPAID FEES**
- Sec. 593.081. TRUST EXEMPTION**

[Sections 593.082–593.090 reserved for expansion]

SUBCHAPTER E. ADMISSION AND COMMITMENT UNDER PRIOR LAW

- Sec. 593.091. ADMISSION AND COMMITMENT**
- Sec. 593.092. DISCHARGE OF PERSON VOLUNTARILY ADMITTED TO RESIDENTIAL CARE FACILITY**
- Sec. 593.093. REIMBURSEMENT TO COUNTY**

CHAPTER 593. ADMISSION AND COMMITMENT TO MENTAL
RETARDATION SERVICES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 593.001. **ADMISSION.** A person may be admitted for mental retardation services offered by the department or a community center, admitted voluntarily to a residential care program, or committed to a residential care facility, only as provided by this chapter.

Sec. 593.002. **CONSENT REQUIRED.** (a) Except as provided by Subsection (b), the department or a community center may not provide mental retardation services to a client without the client's legally adequate consent.

(b) The department or community center may provide nonresidential mental retardation services, including a comprehensive diagnosis and evaluation, to a client without the client's legally adequate consent if the department or community center has made all reasonable efforts to obtain consent.

(c) The board by rule shall prescribe the efforts to obtain consent that are reasonable and the documentation for those efforts.

Sec. 593.003. **REQUIREMENT OF DIAGNOSIS AND EVALUATION.** (a) Except as provided by Sections 593.027 and 593.028, a person is not eligible to receive mental retardation services unless the person first receives a comprehensive diagnosis and evaluation to determine the person's need and eligibility for services.

(b) Except as provided by Sections 593.027 and 593.028, a person is not eligible for voluntary admission for mental retardation services under Subchapter B unless a comprehensive diagnosis and evaluation has been performed or revised during the three months preceding the date of initial admission for services.

(c) A person may not be committed to a residential care facility under Subchapter C unless a comprehensive diagnosis and evaluation has been performed or revised during the six months preceding the date of the court hearing on the application. If a comprehensive diagnosis and evaluation has not been completed or revised during that period, the court shall order one on receiving the application.

(d) This section does not apply to an eligible child with a developmental disability receiving services under Subchapter A, Chapter 535.

Sec. 593.004. **APPLICATION FOR DIAGNOSIS AND EVALUATION.** A person believed to be a person with mental retardation, the parent if the person is a minor, or the guardian of the person may make written application to the department for a comprehensive diagnosis and evaluation using forms provided by the department.

Sec. 593.005. **COMPREHENSIVE DIAGNOSIS AND EVALUATION.** (a) A comprehensive diagnosis and evaluation is a study of a person believed to be a person with mental retardation that:

(1) is conducted by a diagnosis and evaluation team; and

(2) leads to conclusions and recommendations formulated jointly, with dissenting opinions if any, by the diagnosis and evaluation team.

(b) The study must include:

(1) a social and medical history;

(2) a sequence of medical, neurological, audiological, visual, educational, appropriate psychological, and sociological examinations and observations; and

(3) an examination of the person's adaptive behavior level.

(c) A diagnosis and evaluation team may include only individuals who are:

(1) certified under standards adopted by the department; and

(2) qualified professionally in the fields necessary to perform the comprehensive diagnosis and evaluation.

(d) Except as provided by Subsection (e), the evaluation shall be performed at a facility that is:

(1) approved by the department to conduct comprehensive diagnoses and evaluations; and

(2) nearest to the home of the person being evaluated.

(e) If the person is indigent, the comprehensive diagnosis and evaluation shall be performed at the department's expense at a facility designated by the department.

Sec. 593.006. REPORT. (a) The diagnosis and evaluation team shall prepare a written report of a proposed client's comprehensive diagnosis and evaluation that:

(1) includes:

(A) a summary of the team's findings;

(B) recommendations for mental retardation services needed by the proposed client, if any; and

(C) recommendations of desirable or appropriate programs or placement consistent with the needs of the proposed client; and

(2) is signed by each team member.

(b) If a court has ordered the comprehensive diagnosis and evaluation under Section 593.003, the department shall promptly send a copy of the report to the court and to the proposed client or the proposed client's legal representative.

(c) A person who files an application for a comprehensive diagnosis and evaluation under Section 593.004 shall be promptly notified of the team's findings and recommendations.

Sec. 593.007. NOTIFICATION OF CERTAIN RIGHTS. The department shall inform the person who filed an application for a comprehensive diagnosis and evaluation of the person's right to:

(1) an independent diagnosis and evaluation under Section 592.020; and

(2) an administrative hearing under Section 593.008 by the agency that conducted the diagnosis and evaluation to contest the team's findings or recommendations.

Sec. 593.008. ADMINISTRATIVE HEARING. (a) The proposed client and contestant by right may:

(1) have a public hearing unless the proposed client or contestant requests a closed hearing;

(2) be present at the hearing; and

(3) be represented at the hearing by a person of their choosing, including legal counsel.

(b) The proposed client, contestant, and their respective representative by right may:

(1) have reasonable access at a reasonable time before the hearing to any records concerning the proposed client relevant to the proposed action;

(2) present oral or written testimony and evidence, including the results of an independent diagnosis and evaluation; and

(3) examine witnesses.

(c) The hearing shall be held:

(1) as soon as possible, but not later than the 30th day after the date of the request;

(2) in a convenient location; and

(3) after reasonable notice.

(d) Any interested person may appear and give oral or written testimony.

(e) The board by rule shall implement the hearing procedures.

Sec. 593.009. HEARING REPORT; FINAL DECISION. (a) After each hearing, the hearing officer shall promptly report to the parties in writing the officer's decision, findings of fact, and the reasons for those findings.

(b) The hearing officer's decision is final on the 31st day after the date on which the decision is reported unless a party files an appeal within that period.

(c) The filing of an appeal suspends the hearing officer's decision, and a party may not take action on the decision.

Sec. 593.010. APPEAL. (a) A party to a hearing may appeal the hearing officer's decision without filing a motion for rehearing with the hearing officer.

(b) Venue for the appeal is in the county court of Travis County or the county in which the proposed client resides.

(c) The appeal is by trial de novo.

Sec. 593.011. FEES FOR SERVICES. (a) The department shall charge reasonable fees to cover the costs of services provided to nonindigent persons.

(b) The department shall provide services free of charge to indigent persons.

Sec. 593.012. ABSENT WITHOUT PERMISSION. (a) The superintendent of a residential care facility may immediately issue an order authorizing a peace officer to detain a resident committed to the facility under Subchapter C who is absent from the facility without proper permission.

(b) A peace officer shall immediately notify the superintendent when the officer takes a resident into custody and shall promptly arrange the return of the resident to the assigned facility on request of the superintendent.

[Sections 593.013–593.020 reserved for expansion]

SUBCHAPTER B. APPLICATION AND ADMISSION TO VOLUNTARY MENTAL RETARDATION SERVICES

Sec. 593.021. APPLICATION FOR VOLUNTARY SERVICES. If the diagnosis and evaluation team recommends services, the proposed client, the parent if the proposed client is a minor, or the guardian of the person may apply for voluntary mental retardation services under Section 593.022 or 593.024.

Sec. 593.022. ADMISSION TO VOLUNTARY MENTAL RETARDATION SERVICES. (a) An eligible person who applies for mental retardation services may be admitted as soon as appropriate services are available.

(b) The department facility or community center shall develop a plan for appropriate programs or placement in programs or facilities approved or operated by the department.

(c) The programs or placement must be suited to the needs of the proposed client and consistent with the rights guaranteed by Chapter 592.

(d) The proposed client, the parent if the client is a minor, and the client's guardian shall be encouraged and permitted to participate in the development of the planned programs or placement.

Sec. 593.023. RULES RELATING TO PLANNING OF SERVICES OR TREATMENT. (a) The board by rule shall develop and adopt procedures permitting a client, a parent if the client is a minor, or a guardian of the person to participate in planning the client's treatment and habilitation, including a decision to recommend or place a client in an alternative setting.

(b) The procedures must inform clients, parents, and guardians of the due process provisions of Sections 594.015–594.017, including the right to an administrative hearing and judicial review in county court of a proposed transfer or discharge.

Sec. 593.024. APPLICATION FOR VOLUNTARY RESIDENTIAL CARE SERVICES. (a) An application for voluntary admission to a residential care facility must be made according to department rules and contain a statement of the reasons for which placement is requested.

(b) Voluntary admission includes regular voluntary admission, emergency admission, and respite care.

Sec. 593.025. PLACEMENT PREFERENCE. Preference for requested, voluntary placement in a residential care facility shall be given to the facility located nearest the

residence of the proposed resident, unless there is a compelling reason for placement elsewhere.

Sec. 593.026. REGULAR VOLUNTARY ADMISSION. A regular voluntary admission is permitted if:

- (1) space is available at the facility for which placement is requested; and
- (2) the facility superintendent determines that the facility provides services that meet the needs of the proposed resident.

Sec. 593.027. EMERGENCY ADMISSION. (a) An emergency admission is permitted without a comprehensive diagnosis and evaluation if:

- (1) there is persuasive evidence that the proposed resident is a person with mental retardation;
 - (2) space is available at the facility for which placement is requested;
 - (3) the proposed resident has an urgent need for services that the facility superintendent determines the facility provides; and
 - (4) the facility can provide relief for the urgent need within a year after admission.
- (b) A comprehensive diagnosis and evaluation of the person admitted under this section shall be performed within 30 days after the date of admission.

Sec. 593.028. RESPITE CARE. (a) A person may be admitted for respite care without a comprehensive diagnosis and evaluation if:

- (1) there is persuasive evidence that the proposed resident is a person with mental retardation;
 - (2) space is available at the facility for which respite care is requested;
 - (3) the facility superintendent determines that the facility provides services that meet the needs of the proposed resident; and
 - (4) the proposed resident or the proposed resident's family urgently requires assistance or relief that can be provided within a period not to exceed 30 consecutive days after the date of admission.
- (b) If the relief sought by the proposed resident or the proposed resident's family has not been provided within 30 days, one 30-day extension may be allowed if:
- (1) the facility superintendent determines that the relief may be provided in the additional period; and
 - (2) the parties agreeing to the original placement consent to the extension.
- (c) If an extension is not granted the resident shall be released immediately and may apply for other services.

Sec. 593.029. TREATMENT OF MINOR WHO REACHES MAJORITY. When a facility resident who is voluntarily admitted as a minor approaches 18 years of age and continues to be in need of residential services, the superintendent shall ensure that when the resident becomes an adult:

- (1) the resident's legally adequate consent for admission to the facility is obtained from the resident or the guardian of the person; or
- (2) an application is filed for court commitment under Subchapter C.

Sec. 593.030. WITHDRAWAL FROM SERVICES. A resident voluntarily admitted to a residential care facility may not be detained more than 96 hours after the time the resident, the resident's parents if the resident is a minor, or the guardian of the resident's person requests discharge of the resident as provided by department rules, unless:

- (1) the facility superintendent determines that the resident's condition or other circumstances are such that the resident cannot be discharged without endangering the safety of the resident or the general public;
- (2) the superintendent files an application for judicial commitment under Section 593.041; and

(8) a court issues a protective custody order under Section 593.044 pending a final determination on the application.

[Sections 593.031–593.040 reserved for expansion]

SUBCHAPTER C. COMMITMENT TO RESIDENTIAL CARE FACILITY

Sec. 593.041. APPLICATION FOR PLACEMENT; JURISDICTION. (a) A proposed resident, if an adult, a parent if the proposed resident is a minor, the guardian of the person, the court, or any other interested person, including a community center or agency that conducted a diagnosis and evaluation of the proposed resident, may file an application for a determination that the proposed client is in need of long-term placement in a residential care facility.

(b) The application must be filed with the county clerk in the county in which the proposed resident resides. If the superintendent of a residential care facility files an application for judicial commitment of a voluntary resident, the county in which the facility is located is considered the resident's county of residence.

(c) The county court has original jurisdiction of all judicial proceedings for commitment of a person with mental retardation to residential care facilities.

Sec. 593.042. FORM OF APPLICATION. (a) An application for commitment of a person to a residential care facility must:

(1) be executed under oath; and

(2) include:

(A) the name, birth date, sex, and address of the proposed resident;

(B) the name and address of the proposed resident's parent or guardian, if applicable;

(C) a short, plain statement of the facts demonstrating that commitment to a facility is necessary and appropriate; and

(D) a short, plain statement explaining the inappropriateness of admission to less restrictive services.

(b) If the diagnosis and evaluation report required under Section 593.006 is completed, a copy must be included in the application.

Sec. 593.043. REPRESENTATION BY COUNSEL; APPOINTMENT OF ATTORNEY. (a) The proposed resident shall be represented by an attorney who shall represent the rights and legal interests of the proposed resident without regard to who initiates the proceedings or pays the attorney's fee.

(b) If the proposed resident cannot afford counsel, the court shall appoint an attorney not later than the 11th day before the date set for the hearing.

(c) An attorney appointed under this section is entitled to a reasonable fee. The county in which the proceeding is brought shall pay the attorney's fee from the county's general fund.

(d) The parent, if the proposed resident is a minor, or the guardian of the person may be represented by legal counsel during the proceedings.

Sec. 593.044. ORDER FOR PROTECTIVE CUSTODY. (a) The court in which an application for a hearing is filed may order the proposed resident taken into protective custody if the court determines from certificates filed with the court that the proposed resident is:

(1) believed to be a person with mental retardation; and

(2) likely to cause injury to himself or others if not immediately restrained.

(b) The judge of the court may order a health or peace officer to take the proposed resident into custody and transport the person to:

(1) a designated residential care facility in which space is available; or

(2) a place deemed suitable by the county health authority.

(c) If the proposed resident is a voluntary resident, the court for good cause may order the resident's detention in:

- (1) the facility to which the resident was voluntarily admitted; or
- (2) another suitable location to which the resident may be transported under Subsection (b).

Sec. 593.045. **DETENTION IN PROTECTIVE CUSTODY.** (a) A person under a protective custody order may be detained for not more than 20 days after the date on which custody begins pending an order of the court.

(b) A person under a protective custody order may not be detained in a nonmedical facility used to detain persons charged with or convicted of a crime, unless an extreme emergency exists and in no case for longer than 24 hours.

(c) The county health authority shall ensure that the detained person receives proper care and medical attention pending removal to a residential care facility.

Sec. 593.046. **RELEASE FROM PROTECTIVE CUSTODY.** (a) The administrator of a facility in which a person is held in protective custody shall discharge the person not later than the 20th day after the date on which custody begins if the court that issued the protective custody order has not issued further detention orders.

(b) A facility administrator who believes that the person is a danger to himself or others shall immediately notify the court that issued the protective custody order of this belief.

Sec. 593.047. **SETTING ON APPLICATION.** On the filing of an application the court shall immediately set the earliest practicable date for a hearing to determine the appropriateness of the proposed commitment.

Sec. 593.048. **HEARING NOTICE.** (a) Not later than the 11th day before the date set for the hearing, a copy of the application, notice of the time and place of the hearing and, if appropriate, the order for the comprehensive diagnosis and evaluation shall be served on:

- (1) the proposed resident or the proposed resident's representative;
- (2) the parent if the proposed resident is a minor;
- (3) the guardian of the person; and
- (4) the department.

(b) The notice must specify in plain and simple language:

- (1) the right to an independent diagnosis and evaluation under Section 593.007; and
- (2) the provisions of Sections 593.043, 593.047, 593.049, 593.050, and 593.053.

Sec. 593.049. **HEARING BEFORE JURY; PROCEDURE.** (a) On request of a party to the proceedings, or on the court's own motion, the hearing shall be before a jury.

(b) The Texas Rules of Civil Procedure apply to the selection of the jury, the court's charge to the jury, and all other aspects of the proceedings and trial unless the rules are inconsistent with this subchapter.

Sec. 593.050. **CONDUCT OF HEARING.** (a) The hearing must be open to the public unless the proposed resident or the resident's representative requests that the hearing be closed and the judge determines that there is good cause to close the hearing.

(b) The proposed resident is entitled to be present throughout the hearing. If the court determines that the presence of the proposed resident would result in harm to the proposed resident, the court may waive the requirement in writing clearly stating the reason for the decision.

(c) The proposed resident is entitled to and must be provided the opportunity to confront and cross-examine each witness.

(d) The Texas Rules of Civil Evidence apply. The results of the current diagnosis and evaluation shall be presented in evidence.

(e) The party who filed the application has the burden to prove beyond a reasonable doubt that long-term placement of the proposed resident in a residential care facility is appropriate.

Sec. 593.051. **DISMISSAL AFTER HEARING.** If long-term placement in a residential care facility is not found to be appropriate, the court shall enter a finding to that effect, dismiss the application, and if appropriate, recommend application for admission to voluntary services under Subchapter B.

Sec. 593.052. **ORDER FOR COMMITMENT.** (a) A proposed resident may not be committed to a residential care facility unless:

(1) the proposed resident is a person with mental retardation;

(2) evidence is presented showing that because of retardation, the proposed resident:

(A) represents a substantial risk of physical impairment or injury to himself or others; or

(B) is unable to provide for and is not providing for the proposed resident's most basic personal physical needs;

(3) the proposed resident cannot be adequately and appropriately habilitated in an available, less restrictive setting; and

(4) the residential care facility provides habilitative services, care, training, and treatment appropriate to the proposed resident's needs.

(b) If it is determined that the requirements of Subsection (a) have been met and that long-term placement in a residential care facility is appropriate, the court shall commit the proposed resident for care, treatment, and training to a community center or the department when space is available in a residential care facility.

(c) The court shall immediately send a copy of the commitment order to the department or community center.

Sec. 593.053. **DECISION.** The court in each case shall promptly report in writing the decision and findings of fact.

Sec. 593.054. **NOT A JUDGMENT OF INCOMPETENCE.** An order for commitment is not an adjudication of mental incompetency.

Sec. 593.055. **DESIGNATION OF FACILITY.** If placement in a residential facility is necessary, preference shall be given to the facility nearest to the residence of the proposed resident unless:

(1) space in the facility is unavailable;

(2) the proposed resident, parent if the resident is a minor, or guardian of the person requests otherwise; or

(3) there are other compelling reasons.

Sec. 593.056. **APPEAL.** (a) A party to a commitment proceeding has the right to appeal the judgment to the appropriate court of appeals.

(b) The Texas Rules of Civil Procedure apply to an appeal under this section.

(c) An appeal under this section shall be given a preference setting.

(d) The county court may grant a stay of commitment pending appeal.

[Sections 593.057–593.070 reserved for expansion]

SUBCHAPTER D. FEES

Sec. 593.071. **APPLICATION OF SUBCHAPTER.** This subchapter applies only to a resident admitted to a residential care facility operated by the department.

Sec. 593.072. **INABILITY TO PAY.** A resident may not be denied residential care because of an inability to pay for the care.

Sec. 593.073. **DETERMINATION OF RESIDENTIAL COSTS.** The board by rule may determine the cost of support, maintenance, and treatment of a resident.

Sec. 593.074. MAXIMUM FEES. (a) Except as provided by this section, the department may not charge for a resident total fees from all sources that exceed the cost to the state to support, maintain, and treat the resident.

(b) The department may use the projected cost of providing residential services to establish the maximum fee that may be charged to a payer.

(c) The department may establish maximum fees on one or a combination of the following:

- (1) a statewide per capita;
- (2) an individual facility per capita; or
- (3) the type of service provided.

(d) Notwithstanding Subsection (b), the department may establish a fee in excess of the department's projected cost of providing residential services that may be charged to a payer:

- (1) who is not an individual; and
- (2) whose method of determining the rate of reimbursement to a provider results in the excess.

Sec. 593.075. SLIDING FEE SCHEDULE. (a) The board by rule shall establish a sliding fee schedule for the payment by the resident's parents of the state's total costs for the support, maintenance, and treatment of a resident younger than 18 years of age.

(b) The board shall set the fee according to the parents' net taxable income and ability to pay.

(c) The parents may elect to have their net taxable income determined by their most current financial statement or federal income tax return.

(d) In determining the portion of the costs of the resident's support, maintenance, and treatment that the parents are required to pay, the department shall adjust, when appropriate, the payment required under the fee schedule to allow for consideration of other factors affecting the ability of the parents to pay.

Sec. 593.076. FEE SCHEDULE FOR DIVORCED PARENTS. (a) If the parents of a resident younger than 18 years of age are divorced, the fee charged each parent for the cost of the resident's support, maintenance, and treatment is determined by that parent's own income.

(b) If the divorced parents' combined fees exceed the maximum fee authorized under the fee schedule, the department shall equitably allocate the maximum fee between the parents in accordance with department rules, but a parent's fee may not exceed the individual fee determined for that parent under Subsection (a).

Sec. 593.077. CHILD SUPPORT PAYMENTS FOR BENEFIT OF RESIDENT. (a) Child support payments for the benefit of a resident paid or owed by a parent under court order are considered the property and estate of the resident and the department may:

- (1) be reimbursed for the costs of a resident's support, maintenance, and treatment from those amounts; and
- (2) establish a fee based on the child support obligation in addition to other fees authorized by this subchapter.

(b) The department shall credit the amount of child support a parent actually pays for a resident against monthly charges for which the parent is liable, based on ability to pay.

(c) A parent who receives child support payments for a resident is liable for the monthly charges based on the amount of child support payments actually received in addition to the liability of that parent based on ability to pay.

(d) The department may file a motion to modify a court order that establishes a child support obligation for a resident to require payment of the child support directly to the residential care facility in which the resident resides for the resident's support, maintenance, and treatment if:

- (1) the resident's parent fails to pay child support as required by the order; or

(2) the resident's parent who receives child support fails to pay charges based on the amount of child support payments received.

(e) In addition to modification of an order under Subsection (d), the court may order all past due child support for the benefit of a resident paid directly to the resident's residential care facility to the extent that the department is entitled to reimbursement of the resident's charges from the child support obligation.

Sec. 593.078. PAYMENT FOR ADULT RESIDENTS. (a) A parent of a resident who is 18 years of age or older is not required to pay for the resident's support, maintenance, and treatment.

(b) Except as provided by Section 593.081, a resident and the resident's estate are liable for the costs of the resident's support, maintenance, and treatment regardless of the resident's age.

Sec. 593.079. PREVIOUS FEE AGREEMENTS. The unpaid portion of charges for support, maintenance, and treatment due from a parent before January 1, 1978, under agreements made before that date, remain as an obligation under previous law, but only to the extent of parental responsibility prescribed by the department fee schedule.

Sec. 593.080. STATE CLAIMS FOR UNPAID FEES. (a) Unpaid charges accruing after January 1, 1978, and owed by a parent for the support, maintenance, and treatment of a resident are a claim in favor of the state for the cost of support, maintenance, and treatment of the resident and constitute a lien against the parent's property and estate as provided by Section 593.004, but do not constitute a lien against any other estate or property of the resident.

(b) Except as provided by Section 593.081, costs determined under Section 593.078 constitute a claim by the state against the entire estate or property of the resident, including any share the resident may have by gift, descent, or devise in the estate of the resident's parent or any other person.

Sec. 593.081. TRUST EXEMPTION. (a) If the resident is the beneficiary of a trust that has an aggregate principal of \$50,000 or less, the corpus or income of the trust for the purposes of this subchapter is not considered to be the property of the resident or the resident's estate, and is not liable for the resident's support, maintenance, and treatment regardless of the resident's age.

(b) To qualify for the exemption provided by Subsection (a), the trust must be created by a written instrument, and a copy of the trust instrument must be provided to the department.

(c) A trustee of the trust shall, on the department's request, provide to the department a current financial statement that shows the value of the trust estate.

(d) The department may petition a district court to order the trustee to provide a current financial statement if the trustee does not provide the statement before the 31st day after the date on which the department makes the request. The court shall hold a hearing on the department's petition not later than the 45th day after the date on which the petition is filed. The court shall order the trustee to provide to the department a current financial statement if the court finds that the trustee has failed to provide the statement.

(e) Failure of the trustee to comply with the court's order is punishable by contempt.

(f) For the purposes of this section, the following are not considered to be trusts and are not entitled to the exemption provided by this section:

- (1) a guardianship established under the Texas Probate Code;
- (2) a trust established under Chapter 142, Property Code;
- (3) a facility custodial account established under Section 551.003;
- (4) the provisions of a divorce decree or other court order relating to child support obligations;
- (5) an administration of a decedent's estate; or
- (6) an arrangement in which funds are held in the registry or by the clerk of a court.

[Sections 593.082–593.090 reserved for expansion]

SUBCHAPTER E. ADMISSION AND COMMITMENT UNDER PRIOR LAW

Sec. 593.091. ADMISSION AND COMMITMENT. A resident admitted or committed to a department residential care facility under law in force before January 1, 1978, may remain in the facility until:

(1) necessary and appropriate alternate placement is found; or

(2) the resident can be admitted or committed to a facility as provided by this chapter, if the admission or commitment is necessary to meet the due process requirements of this subtitle.

Sec. 593.092. DISCHARGE OF PERSON VOLUNTARILY ADMITTED TO RESIDENTIAL CARE FACILITY. (a) Except as otherwise provided, a resident voluntarily admitted to a residential care facility under a law in force before January 1, 1978, shall be discharged not later than the 96th hour after the time the superintendent receives written request from the person on whose application the resident was admitted, or on the resident's own request.

(b) The superintendent may detain the resident for more than 96 hours in accordance with Section 593.030.

Sec. 593.093. REIMBURSEMENT TO COUNTY. (a) The state shall reimburse a county an amount not to exceed \$50 for the cost of a hearing held by the county court to commit a resident of a department facility who was committed under a law in force before January 1, 1978, and for whom the due process requirements of this subtitle require another commitment proceeding.

(b) The commissioners court of a county entitled to reimbursement under this section may file a claim for reimbursement with the comptroller.

CHAPTER 594. TRANSFER AND DISCHARGE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 594.001. APPLICABILITY OF CHAPTER

Sec. 594.002. LEAVE; FURLOUGH

Sec. 594.003. HABEAS CORPUS

[Sections 594.004–594.010 reserved for expansion]

SUBCHAPTER B. TRANSFER OR DISCHARGE

Sec. 594.011. SERVICE PROVIDER

Sec. 594.012. REQUEST BY CLIENT, PARENT, OR GUARDIAN

Sec. 594.013. NOTICE OF TRANSFER OR DISCHARGE; APPROVAL

Sec. 594.014. RIGHT TO ADMINISTRATIVE HEARING

Sec. 594.015. ADMINISTRATIVE HEARING

Sec. 594.016. DECISION

Sec. 594.017. APPEAL

Sec. 594.018. NOTICE TO COMMITTING COURT

Sec. 594.019. ALTERNATIVE SERVICES

[Sections 594.020–594.030 reserved for expansion]

SUBCHAPTER C. TRANSFER TO STATE MENTAL HOSPITAL

Sec. 594.031. TRANSFER OF VOLUNTARY RESIDENT

Sec. 594.032. TRANSFER OF COURT-COMMITTED RESIDENT

Sec. 594.033. EVALUATION; COURT ORDER

Sec. 594.034. REQUEST FOR TRANSFER ORDER
Sec. 594.035. HEARING DATE
Sec. 594.036. NOTICE
Sec. 594.037. HEARING LOCATION
Sec. 594.038. HEARING BEFORE JURY
Sec. 594.039. RESIDENT PRESENT AT HEARING
Sec. 594.040. OPEN HEARING
Sec. 594.041. MEDICAL EVIDENCE
Sec. 594.042. HEARING DETERMINATION
Sec. 594.043. DISCHARGE OF RESIDENT
Sec. 594.044. TRANSFER TO RESIDENTIAL CARE FACILITY
Sec. 594.045. RETURN OF COURT-ORDERED TRANSFER RESIDENT

CHAPTER 594. TRANSFER AND DISCHARGE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 594.001. APPLICABILITY OF CHAPTER. (a) A client may not be transferred or discharged except as provided by this chapter and department rules.

(b) This chapter does not apply to the:

- (1) transfer of a client for emergency medical, dental, or psychiatric care for not more than 30 consecutive days;
- (2) voluntary withdrawal of a client from mental retardation services; or
- (3) discharge of a client by a superintendent or director because the person is not a person with mental retardation according to the results of the comprehensive diagnosis and evaluation.

(c) A discharge under Subsection (b)(3) is without further hearings, unless an administrative hearing under Subchapter A, Chapter 593, to contest the comprehensive diagnosis and evaluation is requested.

Sec. 594.002. LEAVE; FURLOUGH. The superintendent may grant or deny a resident a leave of absence or furlough.

Sec. 594.003. HABEAS CORPUS. This chapter does not alter or limit a resident's right to obtain a writ of habeas corpus.

[Sections 594.004–594.010 reserved for expansion]

SUBCHAPTER B. TRANSFER OR DISCHARGE

Sec. 594.011. SERVICE PROVIDER. A service provider shall transfer a client, furlough a client to an alternative placement, or discharge a client if the service provider determines:

- (1) that the client's placement is no longer appropriate to the person's individual needs; or
- (2) that the client can be better treated and habilitated in another setting; and
- (3) placement in another setting that can better treat and habilitate the client has been secured.

Sec. 594.012. REQUEST BY CLIENT, PARENT, OR GUARDIAN. (a) A client, the parent of a client who is a minor, or the guardian of the person may request a transfer or discharge.

(b) The service provider shall determine the appropriateness of the requested transfer or discharge.

(c) If a request is denied, the client, parent, or guardian of the person is entitled to a hearing under Section 594.015 to contest the decision.

Sec. 594.013. NOTICE OF TRANSFER OR DISCHARGE; APPROVAL. (a) A client and the parent or guardian must be notified not later than the 31st day before the date of the proposed transfer or discharge of the client.

(b) A client may not be transferred to another facility without the prior approval and knowledge of the parents or guardian of the client.

Sec. 594.014. RIGHT TO ADMINISTRATIVE HEARING. (a) A client and the parent or the guardian shall be informed of the right to an administrative hearing to contest a proposed transfer or discharge.

(b) A client may not be transferred to another facility or discharged from mental retardation services unless the client is given the opportunity to request and receive an administrative hearing to contest the proposed transfer or discharge.

Sec. 594.015. ADMINISTRATIVE HEARING. (a) An administrative hearing to contest a transfer or discharge decision must be held:

- (1) as soon as possible, but not later than the 30th day after the date of the request;
- (2) in a convenient location; and
- (3) after reasonable notice.

(b) The client, the parent of a client who is a minor, the guardian of the person, and the superintendent have the right to:

- (1) be present and represented at the hearing; and
- (2) have reasonable access at a reasonable time before the hearing to any records concerning the client relevant to the proposed action.

(c) Evidence, including oral and written testimony, shall be presented.

Sec. 594.016. DECISION. (a) After each case, the hearing officer shall promptly report to the parties in writing the officer's decision, findings of fact, and the reasons for those findings.

(b) The hearing officer's decision is final on the 31st day after the date on which the decision is reported, unless an appeal is filed within that period.

(c) The filing of an appeal suspends the decision of the hearing officer, and a party may not take action on the decision.

(d) If an appeal is not filed from a final order granting a request for a transfer or discharge, the superintendent shall proceed with the transfer or discharge.

(e) If an appeal is not filed from a final order denying a request for a transfer or discharge, the client shall remain in the same program or facility at which the client is receiving services.

Sec. 594.017. APPEAL. (a) A party to a hearing may appeal the hearing officer's decision without filing a motion for rehearing with the hearing officer.

(b) Venue for an appeal is the county court of Travis County or the county in which the client resides.

(c) The appeal is by trial de novo.

Sec. 594.018. NOTICE TO COMMITTING COURT. When a resident is discharged, the department shall notify the court that committed the resident to a residential care facility under Subchapter C, Chapter 593.

Sec. 594.019. ALTERNATIVE SERVICES. (a) The department shall provide appropriate alternative or follow-up supportive services consistent with available resources by agreement among the department, the mental retardation authority in the area in which the client will reside, and the client, parent of a client who is a minor, or guardian of the person. The services shall be consistent with the rights guaranteed in Chapter 592.

(b) Placement in a residential care facility, other than by transfer from another residential care facility, may be made only as provided by Subchapters B and C, Chapter 593.

[Sections 594.020–594.030 reserved for expansion]

SUBCHAPTER C. TRANSFER TO STATE MENTAL HOSPITAL

Sec. 594.031. **TRANSFER OF VOLUNTARY RESIDENT.** A voluntary resident may not be transferred to a state mental hospital without legally adequate consent to the transfer.

Sec. 594.032. **TRANSFER OF COURT-COMMITTED RESIDENT.** (a) The superintendent may transfer a resident committed to a residential care facility under Subchapter C, Chapter 593, to a state mental hospital for mental health care if an examination of the resident by a licensed physician indicates symptoms of mental illness to the extent that care, treatment, control, and rehabilitation in a state mental hospital is in the best interest of the resident.

(b) A resident transferred from a residential care facility to a state mental hospital may not remain in the hospital for longer than 30 consecutive days unless the transfer is authorized by a court order under this subchapter.

Sec. 594.033. **EVALUATION; COURT ORDER.** The hospital administrator of the state mental hospital to which a court-committed resident is transferred shall immediately have an evaluation of the resident's condition performed.

Sec. 594.034. **REQUEST FOR TRANSFER ORDER.** (a) If the evaluation performed under Section 594.033 reveals that continued hospitalization is necessary for longer than 30 consecutive days, the hospital administrator of the state mental hospital to which a court-committed resident is transferred shall promptly request from the court that originally committed the resident to the residential care facility an order transferring the resident to the hospital.

(b) In support of the request, the hospital administrator shall send two certificates of medical examination for mental illness as described in Section 574.011, stating that the resident is:

- (1) a person with mental illness; and
- (2) requires observation or treatment in a mental hospital.

Sec. 594.035. **HEARING DATE.** When the committing court receives the hospital administrator's request and the certificates of medical examination, the court shall set a date for the hearing on the proposed transfer.

Sec. 594.036. **NOTICE.** (a) A copy of the transfer request and notice of the transfer hearing shall be personally served on the resident not later than the eighth day before the date set for the hearing.

(b) Notice shall also be served on the parents if the resident is a minor and on the guardian for the resident's person if the resident has been declared to be incompetent as provided by the Texas Probate Code and a guardian has been appointed.

Sec. 594.037. **HEARING LOCATION.** (a) The judge may hold a transfer hearing on the petition at any suitable place in the county.

(b) The hearing should be held in a physical setting that is not likely to have a harmful effect on the resident.

Sec. 594.038. **HEARING BEFORE JURY.** (a) The transfer hearing must be held before a jury unless a waiver of trial by jury is made in writing under oath by the resident, the parent if the resident is a minor, or the resident's guardian of the person.

(b) Notwithstanding the executed waiver, a jury shall determine the issue of the case if the resident, the parent, the guardian of the person, or the resident's legal representative demands a jury trial at any time before the hearing's determination is made.

Sec. 594.039. **RESIDENT PRESENT AT HEARING.** The resident is entitled to be present at the transfer hearing unless the court determines it is in the resident's best interest to not be present.

Sec. 594.040. **OPEN HEARING.** The transfer hearing must be open to the public unless the court:

- (1) finds that it is in the best interest of the resident to close the hearing; and

(2) obtains the consent of the resident, a parent of a resident who is a minor, the resident's guardian of the person, and the resident's legal representative to close the hearing.

Sec. 594.041. **MEDICAL EVIDENCE.** (a) At least two physicians, at least one of whom must be a psychiatrist, must testify at the transfer hearing. The physicians must have examined the resident not earlier than the 15th day before the date set for the hearing.

(b) A person may not be transferred to a mental hospital except on competent medical or psychiatric testimony.

Sec. 594.042. **HEARING DETERMINATION.** The court by order shall approve the transfer of the resident to a state mental hospital if the court or jury determines that the resident:

(1) is a person with mental illness; and

(2) requires a transfer to a state mental hospital for treatment for the resident's own welfare and protection or for the protection of others.

Sec. 594.043. **DISCHARGE OF RESIDENT.** A resident who is transferred to a state mental hospital and no longer requires treatment in a state mental hospital or a residential care facility shall be discharged.

Sec. 594.044. **TRANSFER TO RESIDENTIAL CARE FACILITY.** (a) Except as provided by Section 594.045, a resident who is transferred to a state mental hospital and no longer requires treatment in a state mental hospital but requires treatment in a residential care facility shall be returned to the residential care facility from which the resident was transferred.

(b) The hospital administrator of the state mental hospital shall notify the superintendent of the facility from which the resident was transferred that hospitalization in a state mental hospital is not necessary or appropriate for the resident. The superintendent shall immediately provide for the return of the resident to the facility.

Sec. 594.045. **RETURN OF COURT-ORDERED TRANSFER RESIDENT.** (a) If a resident has been transferred to a state mental hospital under a court order under this subchapter, the hospital administrator of the state mental hospital shall:

(1) send a certificate to the committing court stating that the resident does not require hospitalization in a state mental hospital but requires care in a residential care facility because of mental retardation; and

(2) request that the resident be transferred to a residential care facility.

(b) The transfer may be made only if the judge of the committing court approves the transfer as provided by Section 575.013.

CHAPTER 595. RECORDS

Sec. 595.001. **CONFIDENTIALITY OF RECORDS**

Sec. 595.002. **RULES**

Sec. 595.003. **CONSENT TO DISCLOSURE**

Sec. 595.004. **RIGHT TO PERSONAL RECORD**

Sec. 595.005. **EXCEPTIONS**

Sec. 595.006. **USE OF RECORD IN CRIMINAL PROCEEDINGS**

Sec. 595.007. **CONFIDENTIALITY OF PAST SERVICES**

Sec. 595.008. **EXCHANGE OF RECORDS**

Sec. 595.009. **RECEIPT OF INFORMATION BY PERSONS OTHER THAN CLIENT OR PATIENT**

Sec. 595.010. **DISCLOSURE OF PHYSICAL OR MENTAL CONDITION**

CHAPTER 595. RECORDS

Sec. 595.001. **CONFIDENTIALITY OF RECORDS.** Records of the identity, diagnosis, evaluation, or treatment of a person that are maintained in connection with the

performance of a program or activity relating to mental retardation are confidential and may be disclosed only for the purposes and under the circumstances authorized under Sections 595.003 and 595.004.

Sec. 595.002. RULES. The board shall adopt rules to carry out this chapter that the department considers necessary or proper to:

- (1) prevent circumvention or evasion of the chapter; or
- (2) facilitate compliance with the chapter.

Sec. 595.003. CONSENT TO DISCLOSURE. (a) The content of a confidential record may be disclosed in accordance with the prior written consent of:

- (1) the person about whom the record is maintained;
- (2) the person's parent if the person is a minor;
- (3) the guardian if the person has been adjudicated incompetent to manage the person's personal affairs; or
- (4) if the person is dead:
 - (A) the executor or administrator of the deceased's estate; or
 - (B) if an executor or administrator has not been appointed, the deceased's spouse or, if the deceased was not married, an adult related to the deceased within the first degree of consanguinity.

(b) Disclosure is permitted only to the extent, under the circumstances, and for the purposes allowed under department rules.

Sec. 595.004. RIGHT TO PERSONAL RECORD. (a) The content of a confidential record shall be made available on the request of the person about whom the record was made unless:

- (1) the person is a client; and
- (2) the qualified professional responsible for supervising the client's habilitation states in a signed written statement that having access to the record is not in the client's best interest.

(b) The parent of a minor or the guardian of the person shall be given access to the contents of any record about the minor or person.

Sec. 595.005. EXCEPTIONS. (a) The content of a confidential record may be disclosed without the consent required under Section 595.003 to:

- (1) medical personnel to the extent necessary to meet a medical emergency;
- (2) qualified personnel for management audits, financial audits, program evaluations, or research approved by the department; or
- (3) personnel legally authorized to conduct investigations concerning complaints of abuse or denial of rights of persons with mental retardation.

(b) A person who receives confidential information under Subsection (a)(2) may not directly or indirectly identify a person receiving services in a report of the audit, evaluation, or research, or otherwise disclose any identities.

(c) The department may disclose without the consent required under Section 595.003 a person's educational records to a school district that provides or will provide educational services to the person.

(d) If authorized by an appropriate order of a court of competent jurisdiction granted after application showing good cause, the content of a record may be disclosed without the consent required under Section 595.003. In determining whether there is good cause, a court shall weigh the public interest and need for disclosure against the injury to the person receiving services. On granting the order, the court, in determining the extent to which any disclosure of all or any part of a record is necessary, shall impose appropriate safeguards against unauthorized disclosure.

Sec. 595.006. USE OF RECORD IN CRIMINAL PROCEEDINGS. Except as authorized by a court order under Section 595.005, a confidential record may not be used to:

- (1) initiate or substantiate a criminal charge against a person receiving services; or

(2) conduct an investigation of a person receiving services.

Sec. 595.007. **CONFIDENTIALITY OF PAST SERVICES.** The prohibition against disclosing information in a confidential record applies regardless of when the person received services.

Sec. 595.008. **EXCHANGE OF RECORDS.** The prohibitions against disclosure apply to an exchange of records between government agencies or persons, except for exchanges of information necessary for:

(1) delivery of services to clients; or

(2) payment for mental retardation services as defined in this subtitle.

Sec. 595.009. **RECEIPT OF INFORMATION BY PERSONS OTHER THAN CLIENT OR PATIENT.** (a) A person who receives information that is confidential under this chapter may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was obtained.

(b) This section does not apply to the person about whom the record is made, or the parent, if the person is a minor, or the guardian of the person.

Sec. 595.010. **DISCLOSURE OF PHYSICAL OR MENTAL CONDITION.** This chapter does not prohibit a qualified professional from disclosing the current physical and mental condition of a person with mental retardation to the person's parent, guardian, relative, or friend.

CHAPTER 596. PUBLIC RESPONSIBILITY COMMITTEES

Sec. 596.001. **DEFINITIONS**

Sec. 596.002. **SAFEGUARD PROCEDURE**

Sec. 596.003. **CREATION OF COMMITTEE**

Sec. 596.004. **MEMBERSHIP**

Sec. 596.005. **SELECTION**

Sec. 596.006. **MEETINGS**

Sec. 596.007. **COMPENSATION**

Sec. 596.008. **DUTIES**

Sec. 596.009. **INVESTIGATIONS**

Sec. 596.010. **ANNUAL REPORT**

CHAPTER 596. PUBLIC RESPONSIBILITY COMMITTEES

Sec. 596.001. **DEFINITIONS.** In this chapter:

(1) "Committee" means a public responsibility committee.

(2) "Interdisciplinary team" means a group of mental retardation professionals and paraprofessionals who assess a client's treatment, training, and habilitation needs and make recommendations for services.

Sec. 596.002. **SAFEGUARD PROCEDURE.** The board by rule shall establish a procedure that permits a person or organization other than a client or the department to adequately safeguard the legal rights of clients.

Sec. 596.003. **CREATION OF COMMITTEE.** A public responsibility committee shall be established at each community center and department residential care facility.

Sec. 596.004. **MEMBERSHIP.** (a) A committee is composed of seven members.

(b) Parents, guardians, consumer groups, persons, and organizations that advocate for persons with mental retardation shall be represented on a committee.

(c) An employee of a department facility or community center may not be a member of a committee.

(d) Each member of a committee must reside in the service region served by the facility.

Sec. 596.005. **SELECTION.** (a) The executive committee of the Volunteer Services Council of a department facility, in consultation with the local parents' association, shall select the committee members for the facility.

(b) The local agencies that establish a community center, in consultation with the local parents' associations or interest groups, shall select the committee members for the center.

Sec. 596.006. **MEETINGS.** A committee shall meet at least four times a year.

Sec. 596.007. **COMPENSATION.** A committee member serves without compensation but is entitled to reimbursement for actual expenses, including travel expenses necessarily incurred in the performance of the member's duties.

Sec. 596.008. **DUTIES.** A committee shall:

(1) protect and advocate the health, safety, welfare, and legal and human rights of clients;

(2) receive and investigate complaints made to the committee by or on behalf of clients and make appropriate recommendations as necessary to the:

(A) superintendent or director;

(B) deputy commissioner with authority over the facility;

(C) commissioner; or

(D) governing board;

(3) investigate the alleged denial of rights to a client and determine whether those rights have been denied;

(4) submit instances of abuse or denial of rights to the appropriate authority and advocacy system created under 42 U.S.C. Section 6042 for appropriate action; and

(5) participate in the department's interdisciplinary team if the committee determines participation is appropriate.

Sec. 596.009. **INVESTIGATIONS.** (a) When investigating complaints of abuse or denial of client rights, a committee may, with or without notice, inspect the facility that offers services to a client and the records relating to the diagnosis, evaluation, or treatment of the client as those records relate to the complaint of abuse or denial of rights.

(b) Investigations and findings of a committee are confidential unless:

(1) the committee orders the information released; and

(2) legally adequate consent is obtained for the release of the information.

Sec. 596.010. **ANNUAL REPORT.** (a) The committee shall present an annual report of its work to the commissioner, the executive director of the community center, the appropriate governing board, and the advocacy system created under 42 U.S.C. Section 6042 for the appropriate action.

(b) The report must include a description of all complaints processed.

(c) The names of all individuals shall be kept confidential.

[Chapters 597–610 reserved for expansion]

SUBTITLE E. SPECIAL PROVISIONS RELATING TO MENTAL ILLNESS AND MENTAL RETARDATION

CHAPTER 611. MENTAL HEALTH RECORDS

Sec. 611.001. **DEFINITIONS**

Sec. 611.002. **CONFIDENTIALITY OF INFORMATION AND PROHIBITION
AGAINST DISCLOSURE**

Sec. 611.003. **PERSONS WHO MAY CLAIM PRIVILEGE OF CONFIDENTIALITY**

Sec. 611.004. **AUTHORIZED DISCLOSURE OF CONFIDENTIAL INFORMATION**

Sec. 611.005. **LEGAL REMEDIES FOR IMPROPER DISCLOSURE**

CHAPTER 611. MENTAL HEALTH RECORDS

Sec. 611.001. DEFINITIONS. In this chapter:

(1) "Patient" means a person who consults or is interviewed by a professional for diagnosis, evaluation, or treatment of any mental or emotional condition or disorder, including alcoholism or drug addiction.

(2) "Professional" means:

(A) a person authorized to practice medicine in any state or nation;

(B) a person licensed or certified by this state to diagnose, evaluate, or treat any mental or emotional condition or disorder; or

(C) a person the patient reasonably believes is authorized, licensed, or certified as provided by this subsection.

Sec. 611.002. CONFIDENTIALITY OF INFORMATION AND PROHIBITION AGAINST DISCLOSURE. (a) Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

(b) Confidential communications or records may not be disclosed except as provided by Section 611.004.

(c) This section applies regardless of when the patient received services from a professional.

Sec. 611.003. PERSONS WHO MAY CLAIM PRIVILEGE OF CONFIDENTIALITY.

(a) The privilege of confidentiality may be claimed by:

(1) the patient;

(2) a person listed in Section 611.004(a)(4) or (a)(5) who is acting on the patient's behalf; or

(3) the professional, but only on behalf of the patient.

(b) The authority of a professional to claim the privilege of confidentiality on behalf of the patient is presumed in the absence of evidence to the contrary.

Sec. 611.004. AUTHORIZED DISCLOSURE OF CONFIDENTIAL INFORMATION.

(a) A professional may disclose confidential information only:

(1) to a governmental agency if the disclosure is required or authorized by law;

(2) to medical or law enforcement personnel if the professional determines that there is a probability of imminent physical injury by the patient to the patient or others or there is a probability of immediate mental or emotional injury to the patient;

(3) to qualified personnel for management audits, financial audits, program evaluations, or research, in accordance with Subsection (b);

(4) to a person who has the written consent of the patient, or a parent if the patient is a minor, or a guardian if the patient has been adjudicated as incompetent to manage the patient's personal affairs;

(5) to the patient's personal representative if the patient is deceased;

(6) to individuals, corporations, or governmental agencies involved in paying or collecting fees for mental or emotional health services provided by a professional;

(7) to other professionals and personnel under the professionals' direction who participate in the diagnosis, evaluation, or treatment of the patient;

(8) in an official legislative inquiry relating to a state hospital or state school as provided by Subsection (c); or

(9) in a civil action or in a criminal case or criminal law matter as otherwise allowed by law or rule.

(b) Personnel who receive confidential information under Subsection (a)(3) may not directly or indirectly identify or otherwise disclose the identity of a patient in a report or in any other manner.

(c) The exception in Subsection (a)(8) applies only to records created by the state hospital or state school or by the employees of the hospital or school. Information or records that identify a patient may be released only with the patient's proper consent.

(d) A person who receives information from confidential communications or records may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the person first obtained the information. This subsection does not apply to a person listed in Subsection (a)(4) or (a)(5) who is acting on the patient's behalf.

Sec. 611.005. **LEGAL REMEDIES FOR IMPROPER DISCLOSURE.** (a) A person aggrieved by a violation of this chapter may petition the district court of the county in which the person resides for appropriate injunctive relief. The person may petition a district court of Travis County if the person is not a resident of this state.

(b) The aggrieved person also has a civil cause of action for damages.

CHAPTER 612. INTERSTATE COMPACT ON MENTAL HEALTH

Sec. 612.001. **EXECUTION OF INTERSTATE COMPACT**

Sec. 612.002. **COMPACT ADMINISTRATOR**

Sec. 612.003. **APPLICATION OF SUNSET ACT**

Sec. 612.004. **GENERAL POWERS AND DUTIES OF ADMINISTRATOR**

Sec. 612.005. **SUPPLEMENTARY AGREEMENTS**

Sec. 612.006. **FINANCIAL ARRANGEMENTS**

Sec. 612.007. **REQUIREMENTS AFFECTING TRANSFERS OF CERTAIN PATIENTS**

CHAPTER 612. INTERSTATE COMPACT ON MENTAL HEALTH

Sec. 612.001. **EXECUTION OF INTERSTATE COMPACT.** This state enters into a compact with all other states legally joining in the compact in substantially the following form:

"INTERSTATE COMPACT ON MENTAL HEALTH

"The contracting states solemnly agree th

"ARTICLE I

"The party states find that the proper and expeditious treatment of the mentally ill and mentally deficient can be facilitated by cooperative action, to the benefit of the patients, their families, and society as a whole. Further, the party states find that the necessity of and desirability for furnishing such care and treatment bears no primary relation to the residence or citizenship of the patient but that, on the contrary, the controlling factors of community safety and humanitarianism require that facilities and services be made available for all who are in need of them. Consequently, it is the purpose of this compact and of the party states to provide the necessary legal basis for the institutionalization or other appropriate care and treatment of the mentally ill and mentally deficient under a system that recognizes the paramount importance of patient welfare and to establish the responsibilities of the party states in terms of such welfare.

"ARTICLE II

"As used in this compact:

"(a) 'Sending state' shall mean a party state from which a patient is transported pursuant to the provisions of the compact or from which it is contemplated that a patient may be so sent.

"(b) 'Receiving state' shall mean a party state to which a patient is transported pursuant to the provisions of the compact or to which it is contemplated that a patient may be so sent.

“(c) ‘Institution’ shall mean any hospital or other facility maintained by a party state or political subdivision thereof for the care and treatment of mental illness or mental deficiency.

“(d) ‘Patient’ shall mean any person subject to or eligible as determined by the laws of the sending state, for institutionalization or other care, treatment, or supervision pursuant to the provisions of this compact.

“(e) ‘After-care’ shall mean care, treatment and services provided a patient, as defined herein, on convalescent status or conditional release.

“(f) ‘Mental illness’ shall mean mental disease to such extent that a person so afflicted requires care and treatment for his own welfare, or the welfare of others, or of the community.

“(g) ‘Mental deficiency’ shall mean mental deficiency as defined by appropriate clinical authorities to such extent that a person so afflicted is incapable of managing himself and his affairs, but shall not include mental illness as defined herein.

“(h) ‘State’ shall mean any state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

“ARTICLE III

“(a) Whenever a person physically present in any party state shall be in need of institutionalization by reason of mental illness or mental deficiency, he shall be eligible for care and treatment in an institution in that state irrespective of his residence, settlement or citizenship qualifications.

“(b) The provisions of paragraph (a) of this article to the contrary notwithstanding, any patient may be transferred to an institution in another state whenever there are factors based upon clinical determinations indicating that the care and treatment of said patient would be facilitated or improved thereby. Any such institutionalization may be for the entire period of care and treatment or for any portion or portions thereof. The factors referred to in this paragraph shall include the patient's full record with due regard for the location of the patient's family, character of the illness and probable duration thereof, and such other factors as shall be considered appropriate.

“(c) No state shall be obliged to receive any patient pursuant to the provisions of paragraph (b) of this article unless the sending state has given advance notice of its intention to send the patient; furnished all available medical and other pertinent records concerning the patient; given the qualified medical or other appropriate clinical authorities of the receiving state an opportunity to examine the patient if said authorities so wish; and unless the receiving state shall agree to accept the patient.

“(d) In the event that the laws of the receiving state establish a system of priorities for the admission of patients, an interstate patient under this compact shall receive the same priority as a local patient and shall be taken in the same order and at the same time that he would be taken if he were a local patient.

“(e) Pursuant to this compact, the determination as to the suitable place of institutionalization for a patient may be reviewed at any time and such further transfer of the patient may be made as seems likely to be in the best interest of the patient.

“ARTICLE IV

“(a) Whenever, pursuant to the laws of the state in which a patient is physically present, it shall be determined that the patient should receive after-care or supervision, such care or supervision may be provided in a receiving state. If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state shall have reason to believe that after-care in another state would be in the best interest of the patient and would not jeopardize the public safety, they shall request the appropriate authorities in the receiving state to investigate the desirability of affording the patient such after-care in said receiving state, and such investigation shall be made with all reasonable speed. The request for investigation shall be accompanied by complete information concerning the patient's intended place of

residence and the identity of the person in whose charge it is proposed to place the patient, the complete medical history of the patient, and such other documents as may be pertinent.

“(b) If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state and the appropriate authorities in the receiving state find that the best interest of the patient would be served thereby, and if the public safety would not be jeopardized thereby, the patient may receive after-care or supervision in the receiving state.

“(c) In supervising, treating, or caring for a patient on after-care pursuant to the terms of this article, a receiving state shall employ the same standards of visitation, examination, care, and treatment that it employs for similar local patients.

“ARTICLE V

“Whenever a dangerous or potentially dangerous patient escapes from an institution in any party state, that state shall promptly notify all appropriate authorities within and without the jurisdiction of the escape in a manner reasonably calculated to facilitate the speedy apprehension of the escapee. Immediately upon the apprehension and identification of any such dangerous or potentially dangerous patient, he shall be detained in the state where found pending disposition in accordance with law.

“ARTICLE VI

“The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the patient, shall be permitted to transport any patient being moved pursuant to this compact through any and all states party to this compact, without interference.

“ARTICLE VII

“(a) No person shall be deemed a patient of more than one institution at any given time. Completion of transfer of any patient to an institution in a receiving state shall have the effect of making the person a patient of the institution in the receiving state.

“(b) The sending state shall pay all costs of and incidental to the transportation of any patient pursuant to this compact, but any two or more party states may, by making a specific agreement for that purpose, arrange for a different allocation of costs as among themselves.

“(c) No provision of this compact shall be construed to alter or affect any internal relationships among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

“(d) Nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to any provision of this compact.

“(e) Nothing in this compact shall be construed to invalidate any reciprocal agreement between a party state and a non-party state relating to institutionalization, care or treatment of the mentally ill or mentally deficient, or any statutory authority pursuant to which such agreements may be made.

“ARTICLE VIII

“(a) Nothing in this compact shall be construed to abridge, diminish, or in any way impair the rights, duties, and responsibilities of any patient's guardian on his own behalf or in respect of any patient for whom he may serve, except that where the transfer of any patient to another jurisdiction makes advisable the appointment of a supplemental or substitute guardian, any court of competent jurisdiction in the receiving state may make such supplemental or substitute appointment and the court which appointed the previous guardian shall upon being duly advised of the new appointment, and upon the satisfactory

completion of such accounting and other acts as such court may by law require, relieve the previous guardian of power and responsibility to whatever extent shall be appropriate in the circumstances; provided, however, that in the case of any patient having settlement in the sending state, the court of competent jurisdiction in the sending state shall have the sole discretion to relieve a guardian appointed by it or continue his power and responsibility, whichever it shall deem advisable. The court in the receiving state may, in its discretion, confirm or reappoint the person or persons previously serving as guardian in the sending state in lieu of making a supplemental or substitute appointment.

"(b) The term guardian as used in paragraph (a) of this article shall include any guardian, trustee, legal committee, conservator, or other person or agency however denominated who is charged by law with power to act for or responsibility for the person or property of a patient.

"ARTICLE IX

"(a) No provision of this compact except Article V shall apply to any person institutionalized while under sentence in a penal or correctional institution or while subject to trial on a criminal charge, or whose institutionalization is due to the commission of an offense for which, in the absence of mental illness or mental deficiency, said person would be subject to the incarceration in a penal or correctional institution.

"(b) To every extent possible, it shall be the policy of states party to this compact that no patient shall be placed or detained in any prison, jail or lockup, but such patient shall, with all expedition, be taken to a suitable institutional facility for mental illness or mental deficiency.

"ARTICLE X

"(a) Each party state shall appoint a compact administrator who, on behalf of his state, shall act as general coordinator of activities under the compact in his state and who shall receive copies of all reports, correspondence, and other documents relating to any patient processed under the compact by his state either in the capacity of sending or receiving state. The compact administrator or his duly designated representative shall be the official with whom other party states shall deal in any matter relating to the compact or any patient processed thereunder.

"(b) The compact administrators of the respective party states shall have power to promulgate reasonable rules and regulations to carry out more effectively the terms and provisions of this compact.

"ARTICLE XI

"The duly constituted administrative authorities of any two or more party states may enter into supplementary agreements for the provision of any service or facility or for the maintenance of any institution on a joint or cooperative basis whenever the states concerned shall find that such agreements will improve services, facilities, or institutional care and treatment in the fields of mental illness or mental deficiency. No such supplementary agreement shall be construed so as to relieve any party state of any obligation which it otherwise would have under other provisions of this compact.

"ARTICLE XII

"This compact shall enter into full force and effect as to any state when enacted by it into law and such state shall thereafter be a party thereto with any and all states legally joining therein.

"ARTICLE XIII

"(a) A state party to this compact may withdraw therefrom by enacting a statute repealing the same. Such withdrawal shall take effect one year after notice thereof has been communicated officially and in writing to the governors and compact administrators of all other party states. However, the withdrawal of any state shall not change the

status of any patient who has been sent to said state or sent out of said state pursuant to the provisions of the compact.

"(b) Withdrawal from any agreement permitted by Article VII(b) as to costs or from any supplementary agreement made pursuant to Article XI shall be in accordance with the terms of such agreement.

"ARTICLE XIV

"This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters."

Sec. 612.002. COMPACT ADMINISTRATOR. (a) Under the compact, the governor shall appoint the commissioner of mental health and mental retardation as the compact administrator.

(b) The compact administrator may appoint a designee to perform the administrator's duties.

Sec. 612.003. APPLICATION OF SUNSET ACT. The office of Interstate Compact on Mental Health Administrator for Texas is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that Act, the office is abolished, and this chapter expires on the date established by law for the abolition of the Texas Department of Mental Health and Mental Retardation.

Sec. 612.004. GENERAL POWERS AND DUTIES OF ADMINISTRATOR. (a) The compact administrator, acting jointly with like officers of other states that are parties to the compact, may adopt rules to carry out the compact more effectively.

(b) The compact administrator shall cooperate with all departments, agencies, and officers of this state and its subdivisions in facilitating the proper administration of the compact or of a supplementary agreement entered into by this state under the compact.

(c) For informational purposes, the compact administrator shall file with the secretary of state notice of compact meetings for publication in the Texas Register.

Sec. 612.005. SUPPLEMENTARY AGREEMENTS. (a) The compact administrator may enter into supplementary agreements with appropriate officials of other states under Articles VII and XI of the compact.

(b) If a supplementary agreement requires or contemplates the use of an institution or facility of this state or requires or contemplates the provision of a service by this state, the supplementary agreement does not take effect until approved by the head of the department or agency:

- (1) under whose jurisdiction the institution or facility is operated; or
- (2) that will perform the service.

Sec. 612.006. FINANCIAL ARRANGEMENTS. The compact administrator may make or arrange for the payments necessary to discharge the financial obligations imposed on this state by the compact or by a supplementary agreement entered into under the compact, subject to the approval of the comptroller.

Sec. 612.007. REQUIREMENTS AFFECTING TRANSFERS OF CERTAIN PATIENTS. (a) The compact administrator shall consult with the immediate family of any person proposed to be transferred.

(b) If a person is proposed to be transferred from an institution in this state to an institution in another state that is a party to the compact, the compact administrator may not take final action without the approval of the district court of the district in which the person resides.

CHAPTER 613. KIDNEY DONATION BY WARD WITH MENTAL RETARDATION

Sec. 613.001. DEFINITION

Sec. 613.002. COURT ORDER AUTHORIZING KIDNEY DONATION

Sec. 613.003. PETITION FOR COURT ORDER

Sec. 613.004. COURT HEARING

Sec. 613.005. INTERVIEW AND EVALUATION ORDER BY COURT

CHAPTER 613. KIDNEY DONATION BY WARD WITH MENTAL RETARDATION

Sec. 613.001. DEFINITION. In this chapter, "ward with mental retardation" means a ward who is a person with mental retardation, as defined by Subtitle D.

Sec. 613.002. COURT ORDER AUTHORIZING KIDNEY DONATION. A district court may authorize the donation of a kidney of a ward with mental retardation to a father, mother, son, daughter, brother, or sister of the ward if:

- (1) the guardian of the ward with mental retardation consents to the donation;
- (2) the ward is 12 years of age or older;
- (3) the ward assents to the kidney transplant;
- (4) the ward has two kidneys;
- (5) without the transplant the donee will soon die or suffer severe and progressive deterioration, and with the transplant the donee will probably benefit substantially;
- (6) there are no medically preferable alternatives to a kidney transplant for the donee;
- (7) the risks of the operation and the long-term risks to the ward are minimal;
- (8) the ward will not likely suffer psychological harm; and
- (9) the transplant will promote the ward's best interests.

Sec. 613.003. PETITION FOR COURT ORDER. The guardian of the person of a ward with mental retardation may petition a district court having jurisdiction of the guardian for an order authorizing the ward to donate a kidney under Section 613.002.

Sec. 613.004. COURT HEARING. (a) The court shall hold a hearing on the petition filed under Section 613.003.

(b) A party to the proceeding is entitled on request to a preferential setting for the hearing.

(c) The court shall appoint an attorney ad litem and a guardian ad litem to represent the interest of the ward with mental retardation. Neither person appointed may be related to the ward within the second degree by consanguinity.

(d) The hearing must be adversary in order to secure a complete record, and the attorney ad litem shall advocate the ward's interest, if any, in not being a donor.

(e) The petitioner has the burden of establishing good cause for the kidney donation by establishing the prerequisites prescribed by Section 613.002.

Sec. 613.005. INTERVIEW AND EVALUATION ORDER BY COURT. (a) Before the eighth day after the date of the hearing, the court shall interview the ward with mental retardation to determine if the ward assents to the donation. The interview shall be conducted in chambers and out of the presence of the guardian.

(b) If the court considers it necessary, the court may order the performance of a comprehensive diagnosis and evaluation, as provided by Section 593.005, to help the court evaluate the ward's capacity to agree to the donation.

**CHAPTER 614. TEXAS COUNCIL ON OFFENDERS WITH
MENTAL IMPAIRMENTS**

Sec. 614.001. DEFINITIONS

Sec. 614.002. COMPOSITION OF COUNCIL

Sec. 614.003. APPLICATION OF SUNSET ACT
Sec. 614.004. TERMS
Sec. 614.005. OFFICERS; MEETINGS
Sec. 614.006. REIMBURSEMENT FOR EXPENSES
Sec. 614.007. POWERS AND DUTIES
Sec. 614.008. PILOT PROGRAM
Sec. 614.009. REPORT

CHAPTER 614. TEXAS COUNCIL ON OFFENDERS WITH MENTAL IMPAIRMENTS

Sec. 614.001. DEFINITIONS. In this chapter:

(1) "Adaptive behavior" means the effectiveness with which a person meets the standards of personal independence and social responsibility reasonably expected of the person's age and cultural group.

(2) "Case management" means a process by which a person or team responsible for establishing and continuously maintaining contact with a person with mental illness, a developmental disability, or mental retardation provides that person with access to services required by the person and ensures the coordinated delivery of those services to the person.

(3) "Council" means the Texas Council on Offenders with Mental Impairments.

(4) "Developmental disability" means a condition of severe, chronic disability that:

(A) is attributable to a mental or physical impairment;

(B) is manifested before the person reaches 22 years of age;

(C) is likely to continue indefinitely;

(D) results in substantial functional limitations in three or more of the following areas of major life activity:

(i) self-care;

(ii) self-direction;

(iii) learning;

(iv) language;

(v) mobility;

(vi) capacity for independent living; or

(vii) economic self-sufficiency; and

(E) reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services of extended or lifelong duration that are individually planned and coordinated.

(5) "Mental illness" means an illness, disease, or condition that:

(A) substantially impairs a person's thought, perception of reality, emotional process, or judgment; or

(B) grossly impairs a person's behavior, as shown by recent disturbed behavior.

(6) "Mental retardation" means significantly subaverage intellectual functioning that originated during the developmental period and exists concurrently with deficits in adaptive behavior.

(7) "Offender with a mental impairment" means a person with mental illness, mental retardation, or a developmental disability who is arrested or charged with a criminal offense.

(8) "Person with mental retardation" means a person with mental retardation that is not a mental disorder who, because of the mental deficit, requires special training, education, supervision, treatment, care, or control in the person's home or community or in a private or state school for persons with mental retardation.

Sec. 614.002. COMPOSITION OF COUNCIL. (a) The Texas Council on Offenders with Mental Impairments is composed of 28 members.

(b) The governor shall appoint nine at-large members to serve on the council.

(c) The executive head of each of the following agencies, divisions of agencies, or associations, or that person's designated representative, shall serve as a member of the council:

- (1) the institutional division of the Texas Department of Criminal Justice;
- (2) the Texas Department of Mental Health and Mental Retardation;
- (3) the pardons and paroles division of the Texas Department of Criminal Justice;
- (4) the community justice assistance division of the Texas Department of Criminal Justice;
- (5) the Texas Juvenile Probation Commission;
- (6) the Texas Youth Commission;
- (7) the Texas Rehabilitation Commission;
- (8) the Central Education Agency;
- (9) the Criminal Justice Policy Council;
- (10) the Mental Health Association in Texas;
- (11) the Texas Commission on Alcohol and Drug Abuse;
- (12) the Commission on Law Enforcement Officer Standards and Education;
- (13) the Texas Council of Community Mental Health and Mental Retardation Centers;
- (14) the Commission on Jail Standards;
- (15) the Texas Planning Council for Developmental Disabilities;
- (16) the Texas Association for Retarded Citizens;
- (17) the Texas Alliance for the Mentally Ill;
- (18) the Parent Association for the Retarded of Texas, Inc.; and
- (19) the Texas Department of Human Services.

(d) A representative designated by the executive head of a state agency must be an officer or employee of the agency when designated and while serving on the council, except the representative designated by the director of the Criminal Justice Policy Council must be an employee of that council.

(e) At-large members of the council and members representing associations must have expertise in the rehabilitation of persons with mental illness, mental retardation, or developmental disability when appointed or designated and while serving on the council.

Sec. 614.003. APPLICATION OF SUNSET ACT. The council is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the council is abolished and this chapter expires September 1, 1999.

Sec. 614.004. TERMS. The at-large members of the council serve for staggered six-year terms.

Sec. 614.005. OFFICERS; MEETINGS. (a) The council shall elect a chairman from its members at the first meeting of each calendar year.

(b) The council shall meet at least four times each year and may meet at other times at the call of the chairman or as provided by council rule.

Sec. 614.006. REIMBURSEMENT FOR EXPENSES. A member of the council is not entitled to compensation for performing duties on the council but is entitled to receive reimbursement from the council for travel and other necessary expenses incurred in performing official duties at the rate provided for state employees in the General Appropriations Act.

Sec. 614.007. POWERS AND DUTIES. The council shall:

- (1) determine the status of offenders with mental impairments in the state criminal justice system;

- (2) identify needed services for offenders with mental impairments;
- (3) develop a plan for meeting the treatment, rehabilitative, and educational needs of offenders with mental impairments that includes a case management system and the development of community-based alternatives to incarceration;
- (4) cooperate in coordinating procedures of represented agencies for the orderly provision of services for offenders with mental impairments;
- (5) evaluate programs in this state and outside this state for offenders with mental impairments and recommend to the directors of state programs methods of improving the programs;
- (6) collect and disseminate information about available programs to judicial officers, probation and parole officers, and the public;
- (7) provide technical assistance to represented agencies and organizations in the development of appropriate training programs;
- (8) apply for and receive money made available by the federal or state government or by any other public or private source to be used by the council to perform its duties;
- (9) distribute to political subdivisions, private organizations, or other persons money appropriated by the legislature to be used for the development, operation, or evaluation of programs for offenders with mental impairments;
- (10) develop and implement pilot projects to demonstrate a cooperative program to identify, evaluate, and manage outside of incarceration offenders with mental impairments who do not have an instant offense that is an offense described in Section 3g, Article 42.12, Code of Criminal Procedure; and
- (11) assess the need for demonstration projects and provide management for approved projects.

Sec. 614.008. PILOT PROGRAM. (a) The council shall establish a pilot program in a county selected by the council to implement a cooperative community-based alternative system to divert nonviolent mentally or emotionally impaired offenders from the state criminal justice system and to rehabilitate those offenders.

(b) The program must conform to the report and recommendations made by the Texas Department of Mental Health and Mental Retardation and the Texas Department of Corrections to the 70th Legislature as directed by S.C.R. No. 128, 69th Legislature, Regular Session, 1985.

(c) The council may employ and train a case management team to carry out the purposes of the program and to coordinate the joint efforts of agencies represented on the council.

(d) The agencies represented on the council shall perform duties and offer services as required by the council to further the purposes of the pilot program.

Sec. 614.009. REPORT. Not later than February 1 of each odd-numbered year, the council shall file with the governor, lieutenant governor, and speaker of the house of representatives a report giving the details of the council's activities during the preceding biennium. The report must include:

- (1) an evaluation of any demonstration project undertaken by the council;
- (2) an evaluation of the council's progress toward developing a plan for meeting the treatment, rehabilitative, and educational needs of offenders with mental impairments;
- (3) recommendations of the council made in accordance with Section 614.007(5); and
- (4) any other recommendations that the council considers appropriate.

CHAPTER 615. MISCELLANEOUS PROVISIONS

Sec. 615.001. COUNTY RESPONSIBILITY

Sec. 615.002. ACCESS TO MENTAL HEALTH RECORDS BY PROTECTION AND ADVOCACY SYSTEM

CHAPTER 615. MISCELLANEOUS PROVISIONS

Sec. 615.001. COUNTY RESPONSIBILITY. Each commissioners court shall provide for the support of a person with mental illness or mental retardation who is:

- (1) a resident of the county;
- (2) unable to provide self-support; and
- (3) cannot be admitted to a state mental health or mental retardation facility.

Sec. 615.002. ACCESS TO MENTAL HEALTH RECORDS BY PROTECTION AND ADVOCACY SYSTEM. (a) Notwithstanding other state law, the protection and advocacy system established in this state under the federal Protection and Advocacy for Mentally Ill Individuals Act of 1986 (42 U.S.C. Sec. 10801 et seq.) is entitled to access to records relating to persons with mental illness to the extent authorized by federal law.

(b) If the patient consents to notification, the protection and advocacy system shall notify the Texas Department of Mental Health and Mental Retardation's Office of Client Services and Rights Protection if the system decides to investigate a complaint of abuse, neglect, or rights violation that relates to a patient in a facility or program operated by, licensed by, certified by, or in a contractual relationship with the department.

SECTION 2. REFERENCE. Any reference in law to the "Mentally Retarded Persons Act of 1977" means the "Persons With Mental Retardation Act."

SECTION 3. AMENDMENT. Chapter 22, Human Resources Code, is amended by adding Section 22.0033 to read as follows:

Sec. 22.0033. PROHIBITED ACTIVITIES BY FORMER OFFICERS OR EMPLOYEES. (a) For one year after the date on which a former officer or employee of the department terminates service or employment with the department, the individual may not, directly or indirectly, attempt or aid in the attempt to procure a contract with the department that relates to a program or service in which the individual was directly concerned or for which the individual had administrative responsibility.

(b) This section does not apply to:

(1) a former employee who is compensated on the last date of service or employment below the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule, including a state employee who is exempt from the state's position classification plan; or

(2) a former officer or employee who is employed by another state agency or a community center.

(c) A former officer or employee of the department commits an offense if the former officer or employee violates this section. An offense under this section is a Class A misdemeanor.

SECTION 4. AMENDMENT. Subchapter C, Chapter 61, Human Resources Code, is amended by adding Section 61.049 to read as follows:

Sec. 61.049. CROCKETT STATE SCHOOL FOR GIRLS. The Crockett State School for Girls is under the jurisdiction and control of the commission.

SECTION 5. AMENDMENT. Article 2351, Revised Statutes, is amended to read as follows:

Art. 2351. CERTAIN POWERS SPECIFIED. Each commissioners court shall:

1. Establish public ferries whenever the public interest may require.
2. Lay out and establish, change, discontinue, close, abandon, or vacate public roads and highways.
3. Build bridges and keep them in repair.
4. Appoint road overseers and apportion hands.
5. Exercise general control over all roads, highways, ferries and bridges in their counties.

6. Provide for the support of paupers [~~and such idiots and lunatics as cannot be admitted into the lunatic asylum~~], residents of their county, who are unable to support themselves. A county is obligated to provide health care assistance to eligible residents only to the extent prescribed by *Chapter 61, Health and Safety Code* [~~the Indigent Health Care and Treatment Act (Article 4438f, Vernon's Texas Civil Statutes)~~], but that ~~chapter [Act]~~ does not affect the authority of a commissioners court to provide eligibility standards or other requirements relating to other assistance programs or services that are not covered by *Chapter 61* [~~the Indigent Health Care and Treatment Act~~].

7. Provide for the interment or cremation of paupers. No pauper shall be cremated if a relative or friend expresses objection to this procedure.

7. Said Court shall have the authority to use county road machinery and funds from the General Fund or Road and Bridge Funds in cleaning streams and in aiding flood control when such improvements are deemed to be of aid to the county in the maintenance and the building of county roads, in counties having a population of from nineteen thousand, eight hundred and fifty (19,850) to nineteen thousand, eight hundred and ninety-five (19,895) according to the last Federal Census.

SECTION 6. AMENDMENT. Section 84.007(e), Civil Practice and Remedies Code, is amended to read as follows:

(e) Sections 84.005 and 84.006 of this chapter do not apply to a health care provider as defined in the Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), unless the provider is a federally funded migrant or community health center under the Public Health Service Act (42 U.S.C.A. Sections 254(b) and (c)) or unless the provider usually provides discounted services at or below costs based on the ability of the beneficiary to pay. Acceptance of Medicare or Medicaid payments will not disqualify a health care provider under this section. In no event shall Sections 84.005 and 84.006 of this chapter apply to a general hospital or special hospital as defined in *Chapter 241, Health and Safety Code*, [~~the Texas Hospital Licensing Law (Article 4437f, Vernon's Texas Civil Statutes)~~] or a facility or institution licensed under *Subtitle C, Title 7, Health and Safety Code*, or *Chapter 242, Health and Safety Code* [~~the Texas Mental Health Code (Article 5547-1 et seq., Vernon's Texas Civil Statutes)~~], or *Chapter 413, Acts of the 53rd Legislature, Regular Session, 1953* (Article 4442c, Vernon's Texas Civil Statutes)].

SECTION 7. AMENDMENT. Section 3.07, Family Code, is amended to read as follows:

Sec. 3.07. CONFINEMENT IN MENTAL HOSPITAL. A divorce may be decreed in favor of one spouse if at the time the suit is filed:

(1) the other spouse has been confined in a mental hospital, a state mental hospital, or private mental hospital, as defined in *Section 571.003, Health and Safety Code* [~~Section 4, Texas Mental Health Code, as amended (Article 5547-4, Vernon's Texas Civil Statutes)~~], in this state or another state for at least three years; and

(2) it appears that the spouse's mental disorder is of such a degree and nature that he is not likely to adjust, or that if he adjusts it is probable that he will suffer a relapse.

SECTION 8. AMENDMENT. Section 55.01(b), Family Code, is amended to read as follows:

(b) If an examination ordered under Subsection (a) of this section is to determine whether the child is mentally retarded, the examination must consist of a comprehensive diagnosis and evaluation as defined in *Subtitle D, Title 7, Health and Safety Code*, [~~the Mentally Retarded Persons Act~~] and shall be conducted at a facility approved by the Texas Department of Mental Health and Mental Retardation.

SECTION 9. AMENDMENT. Sections 55.02(b) and (c), Family Code, are amended to read as follows:

(b) *Subtitle C, Title 7, Health and Safety Code*, [~~The Texas Mental Health Code (5547-1 et seq., Vernon's Texas Civil Statutes)~~] governs proceedings for temporary hospitalization except that the juvenile court shall conduct the proceedings whether or not the juvenile court is also a county court.

(c) If the juvenile court enters an order of temporary hospitalization of the child, the child shall be cared for, treated, and released in conformity to *Subtitle C, Title 7, Health and Safety Code*, ~~[the Texas Mental Health Code]~~ except:

- (1) a juvenile court order of temporary hospitalization of a child automatically expires when the child becomes 18 years of age;
- (2) the head of a mental hospital shall notify the juvenile court that ordered temporary hospitalization at least 10 days prior to discharge of the child; and
- (3) appeal from juvenile court proceedings under this section shall be to the court of civil appeals as in other proceedings under this title.

SECTION 10. AMENDMENT. Section 55.03(b) and (c), Family Code, are amended to read as follows:

(b) *Subtitle D, Title 7, Health and Safety Code*, ~~[The Mentally Retarded Persons Act (Article 3871b, Vernon's Texas Civil Statutes)]~~ governs proceedings for commitment of a child meeting the criteria set forth in Subsection (a) of this section except that:

- (1) the juvenile court shall conduct the proceedings whether or not the juvenile court is also a county court; and
- (2) on receipt of the court's order entering the findings set forth in Subsection (a) of this section, together with those findings set forth in *Subtitle D, Title 7, Health and Safety Code*, ~~[the Mentally Retarded Persons Act]~~ as prerequisites for court commitments, the Texas Department of Mental Health and Mental Retardation or the appropriate community center shall thereupon admit the child to a residential care facility for the mentally retarded.

(c) If the juvenile court enters an order committing the child for care and treatment in a facility for mentally retarded persons, the child shall be cared for, treated, and released in conformity to *Subtitle D, Title 7, Health and Safety Code*, ~~[the Mentally Retarded Persons Act]~~ except:

- (1) the juvenile court that ordered commitment of the child shall be notified at least 10 days prior to discharge of the child; and
- (2) appeal from juvenile court proceedings under this section shall be to the court of civil appeals as in other proceedings under this title.

SECTION 11. AMENDMENT. Section 25.1352(a), Government Code, is amended to read as follows:

(a) A county court at law in Kerr County has the jurisdiction provided by Section 25.0003 except that the county court retains exclusive original jurisdiction of all matters under *Subtitle C, Title 7, Health and Safety Code*, ~~[the Texas Mental Health Code (Article 5547-1 et seq., Vernon's Texas Civil Statutes)]~~ and statutory procedures for the commitment and treatment of persons alleged to be alcoholics, drug-dependent persons, or mentally ill persons.

SECTION 12. AMENDMENT. Section 25.2142(b), Government Code, is amended to read as follows:

(b) A county court at law has concurrent jurisdiction with the county court in mental illness matters and proceedings under *Subtitle C, Title 7, Health and Safety Code* ~~[the Texas Mental Health Code (Article 5547-1 et seq., Vernon's Texas Civil Statutes)]~~.

SECTION 13. AMENDMENT. Section 25.2293(b), Government Code, is amended to read as follows:

(b) A statutory probate court has general jurisdiction, concurrent with the jurisdiction of the county court, to hear and determine all actions, cases, matters, or proceedings instituted under *Subtitle D, Title 7, Health and Safety Code* ~~[the Mentally Retarded Persons Act of 1977 (Article 5547-300, Vernon's Texas Civil Statutes)]~~.

SECTION 14. AMENDMENT. Section 43.181(f), Government Code, is amended to read as follows:

(f) Except as provided by the Code of Criminal Procedure, the district attorney has no power, duty, or privilege in Fort Bend County relating to a civil commitment matter under

Subtitle C, Title 7, Health and Safety Code, [the Texas Mental Health Code (Article 5547-1 et seq., Vernon's Texas Civil Statutes)] for and on behalf of the state.

SECTION 15. AMENDMENT. Section 45.179(c), Government Code, is amended to read as follows:

(c) The county attorney has the powers, duties, and privileges in Fort Bend County relating to civil commitment matters under *Subtitle C, Title 7, Health and Safety Code, [the Texas Mental Health Code (Article 5547-1 et seq., Vernon's Texas Civil Statutes)]* for and on behalf of the state.

SECTION 16. AMENDMENT. Section 241.004, Health and Safety Code, is amended to read as follows:

Sec. 241.004. EXEMPTIONS. This chapter does not apply to a facility:

(1) licensed under Chapter 242 or 577 [~~Sections 88 through 99, Texas Mental Health Code (Articles 5547-88 through 5547-99, Vernon's Texas Civil Statutes);~~];

(2) maintained or operated by the federal government or an agency of the federal government; or

(3) maintained or operated by this state or an agency of this state.

SECTION 17. AMENDMENT. Section 35.003(a), Human Resources Code, is amended to read as follows:

(a) The department's rules must provide that an applicant for assistance is eligible to receive assistance if the applicant resides in this state and meets the department's eligibility criteria for income and need and is not eligible for services under *Subchapter A, Chapter 535, Health and Safety Code [Article 5, Texas Mental Health and Mental Retardation Act (Article 5547-205, Vernon's Texas Civil Statutes)]*. A family or a person with a disability living independently may apply for assistance.

SECTION 18. AMENDMENT. Section 118.055(c), Local Government Code, is amended to read as follows:

(c) The fee for an action involving mental health services is for the services listed in Sections 571.016, 571.017, 571.018, and 574.008(c), *Health and Safety Code [13, 14, and 15, Texas Mental Health Code (Articles 5547-13, 5547-14, and 5547-15, Vernon's Texas Civil Statutes)]*.

SECTION 19. REPEALER. The following articles and Acts, as compiled in Vernon's Texas Civil Statutes are repealed: 2668a; 2668b; 2668c; 2668d; 2668e; 3174; 3174a; 3174b; 3174b-2; 3174b-3; 3174b-4; 3174b-5; 3174b-6; 3174b-7; 3174c; 3175; 3176; 3177; 3178; 3179; 3179a; 3180; 3181; 3182; 3183; 3183b; 3183c; 3183e; 3183f; 3183g; 3184; 3185a; 3187; 3188; 3190; 3191; 3192; 3192a; 3192b; 3196a; 3196b; 3197; 3198; 3199; 3200; 3201; 3201b-2; 3201-c; 3202; 3202-a; 3202-b; 3208; 3209; 3210; 3211; 3212; 3213; 3213a; 3214; 3215; 3216; 3216a; 3217; 3218; 3219; 3220; 3220a; 3221; 3221a; 3221b; 3221c; 3222; 3222a; 3232b; 3232c; 3238a; 3255; 3255a; 3255b; 3255c; 3256; 3257; 3259; 3259a-1; 3259b; 3260; 3261; 3262; 3263; 3263c; 3263d; 3263e; 3263f; 3263g; 3871a; 3871c; 3871d; 3871e; 3871f; 3871g; 4413(49a); 4590-2a; 5547-1; 5547-2; 5547-3; 5547-4; 5547-5; 5547-6; 5547-7; 5547-8; 5547-9; 5547-9A; 5547-10; 5547-11; 5547-12; 5547-13; 5547-14; 5547-15; 5547-16; 5547-17; 5547-18; 5547-19; 5547-20; 5547-21; 5547-22; 5547-23; 5547-24; 5547-25; 5547-26; 5547-27; 5547-28; 5547-29; 5547-30; 5547-31; 5547-32; 5547-33; 5547-34; 5547-35; 5547-36; 5547-37; 5547-38; 5547-39; 5547-40; 5547-41; 5547-42; 5547-43; 5547-44; 5547-45; 5547-46; 5547-47; 5547-48; 5547-49; 5547-50; 5547-51; 5547-52; 5547-53; 5547-54; 5547-55; 5547-56; 5547-57; 5547-58; 5547-58A; 5547-59; 5547-60; 5547-61; 5547-62; 5547-63; 5547-64; 5547-65; 5547-66; 5547-67; 5547-68; 5547-69; 5547-70; 5547-71; 5547-72; 5547-73; 5547-74; 5547-75; 5547-75A; 5547-76; 5547-77; 5547-78; 5547-79; 5547-80; 5547-81; 5547-82; 5547-83; 5547-84; 5547-85; 5547-86; 5547-87; 5547-88; 5547-88A; 5547-89; 5547-90; 5547-91; 5547-92; 5547-93; 5547-94; 5547-95; 5547-96; 5547-96A; 5547-97; 5547-98; 5547-99; 5547-100; 5547-201; 5547-202; 5547-203; 5547-204; 5547-205 (as added by Section 1, Chapter 835, Acts of the 70th Legislature, Regular Session (1987)); 5547-205 (as added by Section 5.01, Chapter 956, Acts of the 70th Legislature, Regular

Session (1987)); 5547-206; 5547-300; 5561a; 5561d; 5561e; 5561f; 5561g; 5561h; 5561i; 5561j; 5561k; and 5561m.

SECTION 20. LEGISLATIVE INTENT OF NO SUBSTANTIVE CHANGE. This Act is enacted under Article III, Section 43, of the Texas Constitution. This is intended as a recodification only, and no substantive change in the law is intended by this Act.

SECTION 21. EFFECTIVE DATE. This Act takes effect September 1, 1991.

SECTION 22. EMERGENCY. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on April 3, 1991, by a non-record vote; passed by the Senate on April 29, 1991, by a viva-voce vote.

Filed without signature May 10, 1991.

Effective September 1, 1991.

CHAPTER 77

H.B. No. 277

AN ACT

relating to the courses and degrees offered at The University of Texas of the Permian Basin.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Sections 72.01 and 72.02, Education Code, are amended to read as follows:

Sec. 72.01. ESTABLISHMENT. The Board of Regents of The University of Texas System shall establish and maintain a fully state-supported coeducational institution of higher education to be known as The University of Texas of the Permian Basin *and to be* ~~be~~ ~~the institution is~~ organized to teach *undergraduate* ~~only junior, senior,~~ and graduate-level courses *but the Board of Regents may establish The University of Texas of the Permian Basin as a general academic teaching institution, as defined by Section 61.003 of this code, offering a standard four-year undergraduate program* ~~[approved by the Coordinating Board, Texas College and University System].~~

Sec. 72.02. COURSES AND DEGREES. The board of regents may prescribe courses leading to such customary degrees as are offered at leading American universities ~~[of this concept]~~ and may award those degrees. It is the intent of the legislature that those degrees include *baccalaureate* ~~[bachelor's]~~ and master's degrees and their equivalents, ~~and that there be established a standard program for this type of institution,~~ but no department, school, or degree program *shall* ~~[may]~~ be instituted except with the prior approval of the *Texas Higher Education Coordinating Board* ~~[Texas College and University System].~~

SECTION 2. Chapter 72, Education Code, is amended by adding Section 72.07 to read as follows:

Sec. 72.07. UNDERGRADUATE ADMISSIONS. (a) If The University of Texas of the Permian Basin is established as a general academic teaching institution under Section 72.01 of this code, the board of regents shall provide for the admission to the university of entering freshmen and of undergraduate transfer students with less than 54 semester hours of college credit at the university.

(b) In addition to other qualitative criteria that the board of regents may establish, the board shall provide that the admission criteria to the university for entering freshmen and for undergraduate transfer students be no less stringent than the criteria for admission to another four-year general academic teaching institution in The University of Texas System for those students.